In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1022

UNITED STATES OF AMERICA, PETITIONER,

v.

JAMES A. BASYE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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RELEVANT DOCKET ENTRIES—DISTRICT COURT

(James A. Basye and Evelyn E. Basye v. United States, No. 44352)

Date	Filings—Proceedings
Nov. 12, 1965	Filed complaint and issued summons
Nov. 22, 1965	Filed summons, executed Nov. 15, 1965.
Jan. 13, 1966	Filed answer of U.S.A.
Mar. 16, 1966	Filed stip. & order consolidating actions Nos. 44352-3-4-5 & 6 for all purposes
May 8, 1967	Filed order consolidating actions & including No. 45575.
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of fact and issue
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after certa stipulations & arguments by counsel, ordered memos to be filed by July 22, 1968 for submission
July 15, 1968	Ordered these consolidated cases submitted
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgments for plaintiffs
Dec. 13, 1968	Entered judgment in favor of plaintiff in the amount of $3,669.95 filed Dec. 12, 1968 Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal Mailed clerks notice of appeal
Apr. 24, 1969	Made, Mailed Record on Appeal CCA

(Jack J. Cook and Carol L. Cook v. United States, No. 44353)

Nov. 12, 1965	Filed complaint and issued summons
Nov. 22, 1965	Filed summons, executed Nov. 16, 1965.
Jan. 13, 1966	Filed answer of U.S.A.
Mar. 16, 1966	Filed stip. & order consolidating actions Nos. 44352-3-4-5 & 6 for all purposes. (In 44352)
May 8, 1967	Filed order consolidating actions & including action No. 45575. (In 44352)

Date	Filings—Proceedings
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of facts and issue (in 44352)
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after certa stipulations & arguments of counsel, ordered memos to be filed by July 22, 1968 and matter cont to July 29, 1968 for submission
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgment for pltfs (in 44352)
Dec. 13, 1968	Entered judgment in favor of pltf filed Dec. 12, 1968 in the amount of $358.39 Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal Mailed clerks notice of filing of appeal.
Apr. 24, 1969	Made, Mailed Record on Appeal CCA

(Maurice C. Fishler and Phyllis H. Fishler v. United States, No. 44354)

Nov. 12, 1965	Filed complaint and issued summons
Nov. 22, 1965	Filed summons, executed Nov. 15, 1965.
Jan. 13, 1966	Filed answer of U.S.A.
Mar. 16, 1966	Filed stip. & order consolidating actions Nos. 44352-3-4-5 & 6 for all purposes. (In 44352)
May 8, 1967	Filed order consolidating actions & including action No. 45575. (In 44352)
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of facts and issue (in 44352)
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after certa stipulations & arguments by counsel, ordered memos to be filed by July 22, 1968 and matter cont to July 29, 1968 for submission
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgment for pltfs (in 44352)

Date	Filings—Proceedings
Dec. 13, 1968	Entered judgment filed Dec. 12, 1968 in favor of pltf in the amount of $1,861.74 Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal Mailed clerks notice of filing of appeal.
Apr. 24, 1969	Made, Mailed Record on Appeal CCA

(Henry Donald Grant and Jean M. Grant v. United States, No. 44355)

Nov. 12, 1965	Filed complaint and issued summons
Nov. 22, 1965	Filed summons, executed Nov. 15, 1965.
Jan. 13, 1966	Filed answer of U.S.A.
Mar. 16, 1966	Filed stip. & order consolidating actions Nos. 44352-3-4-5 & 6 for all purposes. (In 44352)
May 8, 1967	Filed order consolidating actions & including action No. 45575. (In 44352)
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of facts and issue (in 43352)
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after certai stipulations & arguments by counsel, ordered memos to be filed by July 22, 1968 and matter cont to July 29, 1968 for submission
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgment for pltfs (in 44352)
Dec. 13, 1968	Entered judgment filed Dec. 12, 1968 in favor of pltf in the amount of $4,963.33 Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal Mailed clerks notice of deft. filing appeal
Apr. 24, 1969	Made, Mailed Record on Appeal CCA

(William S. Hunter and Jessamine S. Hunter v. United States, No. 44356)

Nov. 12, 1965	Filed complaint and issued summons
Nov. 22, 1965	Filed summons, executed Nov. 15, 1965.
Jan. 13, 1966	Filed answer of U.S.A.

Date	Filings—Proceedings
Mar. 16, 1966	Filed stip. & order consolidating actions Nos. 44352-3-4-5 & 6 for all purposes. (In 44352)
May 8, 1967	Filed order consolidating actions & including action No. 45575. (In 44352)
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of facts and issue (in 44352)
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after cert stipulations & arguments by counsel, ordered memos to be filed by July 22, 1968 and matter cont to July 29, 1968 for submission
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgment for pltfs (in 44352)
Dec. 13, 1968	Entered judgment filed Dec. 12, 1968 in favor of pltf in the amount of $7,061.41 Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal. Mailed clerks notice of deft. filing appeal.
Apr. 24, 1969	Made, Mailed Record on Appeal CCA
	(George W. Sorokowski and Nadia Sorokowski v. United States, No. 45575)
Aug. 26, 1966	Filed complaint, issued summons.
Aug. 30, 1966	Filed Demand for Jury Trial.
Sep. 28, 1966	Filed summons, exec. Aug. 26, 1966.
Oct. 24, 1966	Filed answer of U.S.A.
Mar. 9, 1967	Filed stip. withdrawing demand for jury trial.
May 1, 1967	Filed stip. & order granting leave for deft to file counterclaim by supplemental pleading
May 3, 1967	Filed counterclaim of defendant
May 8, 1967	Filed order consolidating actions Nos. 44352-3-4-5-6 and this action No. 45575 for all purposes.
May 12, 1967	Filed answer of pltffs. to counterclaim.

Date	Filings—Proceedings
Mar. 27, 1968	Filed stipulation for presentation of cases as short cause under rules 7 & 9 and agreed statements of facts and issue (in 44352)
June 21, 1968	Ordered Court trial commenced, on stipulation of facts, after certa stipulations & arguments by counsel, ordered memos to be filed by July 22, 1968 and matter cont to July 29, 1968 for submission
Aug. 5, 1968	Ordered case submitted
Nov. 29, 1968	Filed memo & order directing judgment for pltfs (in 44352)
Dec. 13, 1968	Entered judgment filed Dec. 12, 1968 in favor of pltf in the amount of $3,930.66 and a set off in favor of the deft U.S.A. in the amount of $3,875.31
	Mailed clerks notice of entry of judgment
Feb. 7, 1969	Filed defts. notice of appeal.
	Mailed clerks notice of deft. filing appeal.
Apr. 24, 1969	Made, Mailed Record on Appeal CCA

RELEVANT DOCKET ENTRIES—COURT OF APPEALS

(Nos. 24170, 24171, 24172, 24173, 24174, 24175.)

Date	Filings—Proceedings
May 13, 1969	FILED order (C) granting stip. to consolidate appeals #24170-24175
Apr. 16, 1971	ARGUED AND SUBMITTED (M[Merrill D[Duniway] Hu[Hufstedler])
Sep. 16, 1971	ORDERED OPINION (DUNIWAY) FILED & JUDG TO BE FILED & ENTD
Sep. 16, 1971	Filed opinion Affirmed (see entry of 11/23)
Sep. 16, 1971	Filed & Entered Judgment
Sep. 29, 1971	FILED 6 ORIG & 24 COPIES APPELLEES' PETITION FOR REHEARING
Nov. 23, 1971	Filed order (M D Hu) modifying opinion of 9/16; further ordered that petition for rehearing be denied
Dec. 1, 1971	ISSUED JUDGMENT TO CLERK OF DISTRICT COURT
Feb. 14, 1972	Rcvd SC notice of filing of pet for writ of certiorari (SC# 71-1022)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMES A. BASYE and EVELYN E. BASYE, PLAINTIFFS, vs. UNITED STATES OF AMERICA, DEFENDANT.	Civil No. 44352 Complaint for Refund of Internal Revenue Taxes

Plaintiffs allege:

FIRST CAUSE OF ACTION

I.

Plaintiffs are citizens of the United States and reside in the County of Alameda, in the Southern Division of the Northern District of California. This Court has jurisdiction and venue of this action for refund of Internal Revenue Taxes overpaid under Title 26, U.S.C. § 7422, Title 28, U.S.C. §§ 1346(a)(1), 1402(a)(1), and the Internal Revenue Laws of the United States of America.

II.

On or about April 15, 1961, plaintiffs filed with defendant their federal income tax return for the year 1960 showing tax due thereon in the amount of $7,891.51. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1961.

III.

On or about April 13, 1965, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $1,424.02, together with interest thereon of $356.70.

IV.

On or about June 18, 1965, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs.

V.

On or about July 8, 1965, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit "A" and is by this reference incorporated herein. On or about October 12, 1965, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1960 in the amount of $1,424.02 in tax, plus $356.70 in interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about June 18, 1965, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $1,780.72, together with interest provided by law, and costs.

SECOND CAUSE OF ACTION

I.

Plaintiffs incorporate herein by reference paragraph I of their First Cause of Action.

II.

On or about April 15, 1962, plaintiffs filed with defendant their federal income tax return for the year 1961 showing tax due thereon in the amount of $8,706.00. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1962.

III.

On or about April 13, 1965, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $1,586.93, together with interest thereon of $302.30.

IV.

On or about June 18, 1965, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs.

V.

On or about July 8, 1965, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit "B" and is by this reference incorporated herein. On or about October 12, 1965, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1961 in the amount of $1,586.93 in tax, plus $302.30 in interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about June 18, 1965, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $1,889.23, together with interest provided by law, and costs.

Dated: Nov. 12, 1965

STARK & CHAMPLIN
By John F. Banker
[JOHN F. BANKER]
Attorneys for Plaintiffs

Form 843
(Rev. May 1960)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

District Director's Stamp (Date received)

The District Director will indicate in the block below the kind of claim filed, and fill in, unless required.

- [X] Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- [ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- [ ] Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps

Dr. James A. Baeve and Mrs. Evelyn Baeve

Number and street

6114 Oceanview Drive

City, town, postal zone, State

Oakland, California 94618

Fill in applicable blanks.—Attach letter when space is not sufficient

1. Social security number(s)

560 - 28 - 7480 554 - 36 - 5547

2. If an employer, state employer identification number

---

3. Internal revenue district(s) where filed

San Francisco

4. Kind(s) and address(es) shown on return, if different from above

Same

5. Period(s) for the reported on annual basis, purchase reported from the month (month, year)

From January 1, 1960, to December 31, 1960

6. Kind of tax

Income

7. Amount claimed

$ 1,424.02 Tax
$ 356.90 Interest

8. Date(s) tax paid

June 15, 1965

9. Date stamps were purchased from Government

---

10. Amount to be refunded

$1,780.92

10A. Amount to be abated (not applicable to income, estate, or gift taxes)

$

11. The taxpayer believes that this claim should be allowed for the following reasons:

See Attached

I declare under the penalties of perjury that this claim (including accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed Leonard Mercussen

Dated JUL 8 1965, 19__

Signature of taxpayer(s)

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. If a joint income tax return was filed for the year for which this claim is filed, enter social security and employer identification numbers, if any, of both husband and wife and both must sign this claim even though only one had income.

3. Wherever it is necessary to have this claim signed by an agent on behalf of the taxpayer, an authenticated copy of the document (usually authorizing such agent to sign the claim on behalf of the taxpayer) shall accompany the claim.

4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a claim and a refund check is filed in the name fiduciary, documentary evidence to establish the legal authority of the fiduciary must also accompany the claim, provided a statement is made on the claim showing that the refund check was filed by the fiduciary and that the latter is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

6. If claim is for excess social security (F.I.C.A.) tax withheld as a result of having had more than one employer, include the name and address of your employers, and the amount of wages received and taxes withheld by each as part of your employment in item 11. Do not claim tax withheld if you have obtained the refund withholding on your individual income tax return.

Form 843 (Rev. 5-60)

11. The Commissioner of Internal Revenue assessed an income tax deficiency of $1,424.02 for the year 1960 and an income tax deficiency of $1,586.93 for the year 1961 against taxpayers Dr. James A. Basye and Mrs. Evelyn E. Basye. The basis of the deficiency assessments was set forth in the statement attached to Form L-21A, dated April 13, 1965. A copy of that statement is attached hereto as Exhibit "A". Taxpayers paid these assessments, together with interest in the amount of $659.00, on June 18, 1965.

A summary of the facts upon which this claim is based is as follows:

Taxpayer James A. Basye was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians, and its affiliate, the DeKruif, Echardt, Mott, Rubin, Stricker Group (hereinafter collectively called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group (by either the Permanente Medical Group or its affiliated group, the DeKruif, Echardt, Mott, Rubin, Stricker Group). Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960 and 1961 reported income on the cash receipts and disbursements basis. Taxpayer

James A. Basye had no right to receive any money or other benefits from the trust during the years 1960 and 1961; his expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Basye's participation in the Retirement Plan.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Basye was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Basye did not realize any income during 1959 as an individual participant in said Retirement Plan, because neither cash nor its equivalent was actually or constructively received by him, nor did he receive or realize income in any manner or form as a result of his participation in the Retirement Plan.

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF REGIONAL COMMISSIONER

Appellate Division
447 Sutter Street, Room 301
San Francisco, California 94103

(Illegible) APR 13, 1965

In Reply Refer To
(Illegible)
Ap:SF:AS:CFS

TAXABLE YEAR ENDED	DEFICIENCY
Dec. 31, 1960	$1,424.02
Dec. 31, 1961	1,586.93

Dr. James A. Basye and
Mrs. Evelyn E. Basye
Husband and Wife
6114 Oceanview Drive
Oakland, California

Dear Dr. and Mrs. Basye:

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount(s) shown above. The attached statement shows the computation of the deficiency or deficiencies.

IF YOU AGREE to this determination, please sign the enclosed agreement, Form 870, and return it promptly to this office. An addressed envelope is enclosed for this purpose. The signing and filing of this agreement will permit an early assessment of the deficiency or deficiencies and will limit the accumulation of interest.

IF YOU DO NOT AGREE, and do not sign and return the enclosed form, the deficiency or deficiencies will be assessed

for collection, as required by law, upon the expiration of ninety days from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules, a copy of which may be obtained by writing to its Clerk, Box 70, Washington, D. C. 20044.

Very truly yours,
SHELDON S. COHEN
Commissioner

By (Signed) Edward P. Lee
Associate Chief
Appellate Division

STATEMENT

Ap:SF:AS:CFS
90-D:HVS

Dr. James A. Basye and
Mrs. Evelyn E. Basye
Husband and Wife
6114 Oceanview Drive
Oakland, California

Tax Liability for Taxable Years Ended
December 31, 1960 and December 31, 1961

INCOME TAX

Year	Deficiency
1960	$1,424.02
1961	1,586.93
Total	$3,010.95

Copies of this letter and statement have been mailed to your representatives, Mr. Leonard Marcussen, 1924 Broadway, 6th Floor, Oakland, California, and Stark & Champlin, 1100 Financial Center Building, Oakland, California 94612, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1960

ADJUSTMENTS TO INCOME

Taxable income as disclosed by return		$26,538.40
Unallowable deductions and additional income:		
(a) Partnership income	$3,076.22	
(b) Meals on duty	78.00	3,154.22
Taxable income as revised		$29,692.62

Taxable Year Ended December 31, 1960

EXPLANATION OF ADJUSTMENTS

(a) Examination of the books and records of the partnership, The Permanente Medical Group, discloses that your

distributive share of the corrected partnership ordinary net income of $6,254,210.54 for the fiscal year ended June 30, 1960 and taxable in your calendar year 1960 income tax return is $34,913.91 (see Exhibit A attached). Since you reported $31,837.69, your taxable income is increased by the difference in the amount of $3,076.22.

(b) The deduction of $78.00 claimed for meals is disallowed for the reason that you have not established that this amount constitutes an ordinary and necessary business expense.

Taxable Year Ended December 31, 1960

COMPUTATION OF INCOME TAX

Taxable income	$29,692.62
Income tax liability	$ 9,315.53
Income tax liability disclosed by original return, Document Locator No. 446019522	7,891.51
Deficiency in income tax	$ 1,424.02

Taxable Year Ended December 31, 1961

ADJUSTMENTS TO INCOME

Taxable income as disclosed by return		$28,396.00
Unallowable deductions and additional income:		
(a) Partnership income	$3,298.18	
(b) Meals on duty	78.00	3,376.18
Taxable income as revised		$31,772.18

Taxable Year Ended December 31, 1961

EXPLANATION OF ADJUSTMENTS

(a) Examination of the books and records of the partnership, The Permanente Medical Group, discloses that your distributive share of the corrected partnership ordinary net income of $7,400,581.69 for the fiscal year ended June 30, 1961 and taxable in your calendar year 1961 income tax return is $37,250.18 (see Exhibit B attached). Since you reported $33,952.00, your taxable income is increased by the difference of $3,298.18.

(b) The deduction of $78.00 claimed for meals is disallowed for the reason that you have not established that this amount constitutes an ordinary and necessary business expense.

Taxable Year Ended December 31, 1961

COMPUTATION OF INCOME TAX

Taxable income	$31,772.18
Income tax liability	$10,292.93
Income tax liability disclosed by Original return, Document Locator No.	8,706.00
Deficiency in income tax	$ 1,586.93

The Permanente Medical Group (a Partnership)
Year Ended June 30, 1960

Adjustments to Income

Ordinary income reported in return		$5,735,752.42
Adjustments:		
(a) Payments into trust fund for benefit of partnership	$516,298.38	
(b) Interest income from trust fund	2,159.74	518,458.12
Ordinary income as revised		$6,254,210.54

Explanation of Adjustments

(a) and (b) It has been determined that the payments made by Kaiser Foundation Health Plan, Inc., a California non-profit corporation, into the Trust Fund for the Retirement Plan of The Permanente Medical Group, a partnership, and the interest earned on the funds held by the trustee are income to the partnership. These payments into the Trust Fund are part of the basic compensation paid to The Permanente Medical Group for medical services performed as provided for in the Medical Service Agreement entered into by Kaiser Foundation Health Plan, Inc., and Permanente Medical Group.

Distribution of Income

Name of Partner	Ordinary Income
Basye, James A.	$ 34,913.91
Fishler, Maurice C.	29,144.25
Grant, Henry Donald	38,059.05
Hunter, Jessamine S.	22,435.64
Hunter, William S.	29,501.81
Other partners	6,100,155.88
Total	$6,254,210.54

The Permanente Medical Group (a Partnership)

Year Ended June 30, 1961

Adjustments to Income

Ordinary income reported in return		$6,823,301.30
Adjustments:		
(a) Payments into trust fund for benefit of partnership	$573,924.60	
(b) Interest income from trust fund.	3,355.79	577,280.39
Ordinary income as revised		$7,400,581.69

Explanation of Adjustments

(a) and (b) See explanation of adjustment (a) for the year ended June 30, 1960.

Distribution of Income

Name of Partner	Ordinary Income
Basye, James A.	$ 37,250.18
Lynn, Carol (Carol Cook)	19,155.84
Grant, Henry Donald	41,496.80
Fishler, Maurice C.	31,055.26
Hunter, Jessamine S.	25,537.51
Hunter, William S.	32,207.64
Other Partners	7,213,878.46
Total	$7,400,581.69

Form 2848
(Rev. March 1964)

U.S. Treasury Department - Internal Revenue Service

GENERAL POWER OF ATTORNEY

(CAUTION: Please read instructions on reverse before completing this form)

Know ye, I (address of principal)

James A. and Evelyn E. Basye
6114 Oceanview Drive
Oakland, California

hereby appoint(s) (Name and address of appointee(s))

Leonard Marcusson, 1924 Broadway - 6th Floor, Oakland, California;
Franklin C. Stark, Stanley E. Sparrowe and John F. Wells of
Financial Center Building, Oakland, California

as attorney(s)-in-fact to represent the principal(s) before any office of the Internal Revenue Service with respect to (specify Internal Revenue tax matter(s) and period or periods)

Income tax matter for years 1960 through 1963

Said attorney(s)-in-fact shall, subject to revocation, have full power to perform any and all acts that the principal(s) can perform, including the power to receive (but not to endorse and collect) checks in payment of any refund of Internal Revenue taxes, penalties, or interest, to delegate authority or to substitute another attorney or agent; to execute waivers of restrictions on assessment or collection of deficiencies or limits to execute consents extending the statutory period for assessment or collection of taxes; to execute a closing agreement (under section 7121 of the Internal Revenue Code) in respect of a tax liability or a specific matter; and to execute a protest to a determination of taxes by a district director.

Copies of correspondence addressed to the taxpayer in proceedings involving the above matter(s) should be sent to:

Leonard Marcusson, 1924 Broadway - 6th Floor, Oakland, California
Stark & Champlin, 1100 Financial Center Building, Oakland, California 94612

Any prior powers of attorney filed with this office by the principal(s) relating to the matter(s) and the year(s) or period(s) specified above are hereby revoked.

SIGNATURE OF PRINCIPAL IF INDIVIDUAL OR HUSBAND AND WIFE

Signature of Principal	Date	Signature of Principal	Date
James A. Basye	12-22-64	Evelyn E. Basye	12/22/64

SIGNATURE OF PRINCIPAL IF PARTNERSHIP, ESTATE, CORPORATION, ETC.

I/We (or members of principal) declare that I have the authority to execute this power of attorney on behalf of the principal.

Signature of Principal	Title	Date
Signature of Principal	Title	Date

CORPORATE SEAL (If applicable)

NOTARIZATION OR WITNESSING

The above-named principal signing on or for the principal(s) appeared before me and acknowledged this power of attorney and declared that he/she executed it as his/her/their free act and deed.

Signature of Notary: Dorothy Mathes
Name of Notary (Typed): DOROTHY MATHES
Date: 12-22-64
Notary Public in and for the State of California - Principal Office in Alameda County
My Commission Expires June 13, 1967
1541 West Manchester Blvd., Inglewood, Calif.

This power of attorney was signed by or for the principal(s) by a person or persons known to, and in the presence of, the two declarant witnesses whose signatures appear below.

Signature of Witness	Date
Signature of Witness	Date

CERTIFICATION BY ENROLLED ATTORNEY OR AGENT IN LIEU OF WITNESSING OR NOTARIZATION

I certify that I am in good standing and eligible to practice before the Internal Revenue Service (the following is applicable only if the principal is other than an individual or husband and wife) that to the best of my knowledge and belief, the person(s) signing above has/have the authority to execute this power of attorney on behalf of the principal.

Signature of Attorney-in-Fact	Enrollment Card Number	Expiration Date of Card

Form 2848 (Rev.)

Form 843
(Rev. Dec. 1954)

U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

District Director's Stamp
(Date received)

The District Director will indicate in the blank below the kind of claim filed, and fill in, where required.

- [x] Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- [ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- [ ] Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps

Dr. James A. Beavs and Mrs. Evelyn E. Beavs

Number and street

4114 Oceanview Drive

City, town, postal zone, State

Oakland, California 94618

Fill in applicable blanks. Attach letter when claimant is not taxpayer.

1. Social security number

360 - 28 - 7480

2. If an employee, enter employer identification number

3. District in which return was filed

San Francisco

4. Where and when shown on return, if different from above

Same

5. Period for which assessed or taxes paid, if proper return form for such taxable year

From January 1, 1941, to December 31, 1941

6. Kind of tax

Income

7. Amount assessed

$ 2,568.92 Tax
$ 102.30 Interest

8. Date payment was made

June 18, 1945

9. Date stamps were purchased from Government

10. Amount to be refunded

$ 1,889.33

11. Amount to be abated (not applicable to income, estate, or gift taxes)

$

12. The ground relied upon for the claim should be allowed by the following statute:

See Attached

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signature: Leonard Marcusson

Signature: Franklin C. Stark

Dated: JUL 8 1955, 19

Signature (Corporate officer, partner, or agent)

Signature (Corporate officer, partner, or agent)

INSTRUCTIONS

1. This claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. If a joint income tax return was filed for the year for which this claim is filed, husband and wife should each sign this claim. In the case of husband and wife filing a joint return, this claim must be signed by both husband and wife even though only one had income.

3. Whenever it is necessary to have this claim executed by an agent on behalf of the taxpayer, an executed copy of the power of attorney authorizing such agent to sign the claim on behalf of the taxpayer should be filed with the claim.

4. If a refund is filed by an individual and a refund check is to be issued filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be presented to the claim. Where the authority of the trustee, administrator, guardian, trustee, receiver, or other fiduciary filing the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a claim for refund of taxes illegally collected from the estate of a deceased person, certified copies of the letters testamentary, letters of administration, or other similar evidence must be presented to establish the legal authority of the fiduciary named and also evidencing the claim, provided a statement is made on the claim showing that the estate was filed by the fiduciary and that the estate is still acting.

5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

6. If claim is for excess profits tax (E.P.C.A.) was withheld as a result of having had more than one employer, include the names and addresses of your employers, and the amount of wages received and taxes withheld by each as part of your employment in Item 11. Do not claim the withheld if you have claimed the excess withholding on your individual income tax return.

Form 843 (Rev. 7-55)

11. The Commissioner of Internal Revenue assessed an income tax deficiency of $1,424.02 for the year 1960 and an income tax deficiency of $1,586.93 for the year 1961 against taxpayers Dr. James A. Basye and Mrs. Evelyn E. Basye. The basis of the deficiency assessments was set forth in the statement attached to Form L-21A, dated April 13, 1965. A copy of that statement is attached hereto as Exhibit "A." Taxpayers paid these assessments, together with interest in the amount of $659.00, on June 18, 1965.

A summary of the facts upon which this claim is based is as follows:

Taxpayer James A. Basye was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians, and its affiliate, the DeKruif, Echardt, Mott, Rubin, Stricker Group (hereinafter collectively called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group (by either the Permanente Medical Group or its affiliated group, the DeKruif, Echardt, Mott, Rubin, Stricker Group). Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960 and 1961 reported income

on the cash receipts and disbursements basis. Taxpayer James A. Basye had no right to receive any money or other benefits from the trust during the years 1960 and 1961; his expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Basye's participation in the Retirement Plan.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Basye was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Basye did not realize any income during 1959 as an individual participant in said Retirement Plan, because neither cash nor its equivalent was actually or constructively received by him, nor did he receive or realize income in any manner or form as a result of his participation in the Reitrement Plan.

U.S. TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

OFFICE OF REGIONAL COMMISSIONER

Appellate Division
447 Sutter Street, Room 301
San Francisco, California 94103

Apr 13, 1965

In Reply Refer to
(Illegible)
AP:SF:AS:CFS

(Illegible)

Dr. James A. Basye and Mrs. Evelyn E. Basye Husband and Wife 6114 Oceanview Drive Oakland, California	Taxable Year Ended	Deficiency
	Dec. 31, 1960	$1,424.02
	Dec. 31, 1961	1,586.93

Dear Dr. and Mrs. Basye:

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount(s) shown above. The attached statement shows the computation of the deficiency or deficiencies.

IF YOU AGREE to this determination, please sign the enclosed agreement, Form 870, and return it promptly to this office. An addressed envelope is enclosed for this purpose. The signing and filing of this agreement will permit an early assessment of the deficiency or deficiencies and will limit the accumulation of interest.

IF YOU DO NOT AGREE, and do not sign and return the enclosed form, the deficiency or defiencies will be assessed for collection, as required by law, upon the expiration of ninety days from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules, a copy of which may be

obtained by writing to its Clerk, Box 70, Washington, D.C. 20044.

Very truly yours,

SHELDON S. COHEN
Commissioner

By (Signed) Edward P. Lee
Associate Chief
Appellate Division

Ap:SF:AS:CFS
90-D:HVS

Dr. James A. Basye and
Mrs. Evelyn E. Basye
Husband and Wife
6114 Oceanview Drive
Oakland, California

Tax Liability for Taxable Years Ended
December 31, 1960 and December 31, 1961

INCOME TAX

Year	Deficiency
1960	$1,424.02
1961	1,586.93
Total	$3,010.95

Copies of this letter and statement have been mailed to your representatives, Mr. Leonard Marcussen, 1924 Broadway, 6th Floor, Oakland, California, and Stark & Champlin, 1100 Financial Center Building, Oakland, California 94612, in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1960

ADJUSTMENTS TO INCOME

Taxable income as disclosed by return		$26,538.40
Unallowable deductions and additional income:		
(a) Partnership income	$3,076.22	
(b) Meals on duty	78.00	3,154.22
Taxable income as revised		$29,692.62

Taxable Year Ended December 31, 1960

EXPLANATION OF ADJUSTMENTS

(a) Examination of the books and records of the partnership, The Permanente Medical Group, discloses that your distributive share of the corrected partnership or-

dinary net income of $6,254,210.54 for the fiscal year ended June 30, 1960 and taxable in your calendar year 1960 income tax return is $34,913.91 (see Exhibit A attached). Since you reported $31,837.69, your taxable income is increased by the difference in the amount of $3,076.22.

(b) The deduction of $78.00 claimed for meals is disallowed for the reason that you have not established that this amount constitutes an ordinary and necessary business expense.

Taxable Year Ended December 31, 1960

COMPUTATION OF INCOME TAX

Taxable income	$29,692.62
Income tax liability	$ 9,315.53
Income tax liability disclosed by original return, Document Locator No. 446019522	7,891.51
Deficiency in income tax	$ 1,424.02

Taxable Year Ended December 31, 1961

ADJUSTMENTS TO INCOME

Taxable income as disclosed by return		$28,396.00
Unallowable deductions and additional income:		
(a) Partnership income	$3,298.18	
(b) Meals on duty	78.00	3,376.18
Taxable income as revised		$31,772.18

Taxable Year Ended December 31, 1961

EXPLANATION OF ADJUSTMENTS

(a) Examination of the books and records of the partnership, The Permanente Medical Group, discloses that your distributive share of the corrected partnership ordinary net income of $7,400,581.69 for the fiscal year ended June 30, 1961 and taxable in your calendar year 1961 income tax return is $37,250.18 (see Exhibit B attached). Since you reported $33,952.00, your taxable income is increased by the difference of $3,298.18.

(b) The deduction of $78.00 claimed for meals is disallowed for the reason that you have not established that

this amount constitutes an ordinary and necessary business expense.

Taxable Year Ended December 31, 1961

Computation of Income Tax

Taxable income	$31,772.18
Income tax liability	$10,292.93
Income tax liability disclosed by Original return, Document Locator No.	8,706.00
Deficiency in income tax	$ 1,586.93

EXHIBIT A

The Permanente Medical Group (a Partnership)
Year Ended June 30, 1960

ADJUSTMENTS TO INCOME

Ordinary income reported in return		$5,735,752.42
Adjustments:		
(a) Payments into trust fund for benefit of partnership	$516,298.38	
(b) Interest income from trust fund	2,159.74	518,458.12
Ordinary income as revised		$6,254,210.54

EXPLANATION OF ADJUSTMENTS

(a) and (b) It has been determined that the payments made by Kaiser Foundation Health Plan, Inc., a California non-profit corporation, into the Trust Fund for the Retirement Plan of The Permanente Medical Group, a partnership, and the interest earned on the funds held by the trustee are Income to the partnership. These payments into the Trust Fund are part of the basic compensation paid to The Permanente Medical Group for medical services performed as provided for in the Medical Service Agreement entered into by Kaiser Foundation Health Plan, Inc., and Permanente Medical Group.

DISTRIBUTION OF INCOME

Name of Partner	Ordinary Income
Basye, James A.	$ 34,913.91
Fishler, Maurice C.	29,144.25
Grant, Henry Donald	38,059.05
Hunter, Jessamine S.	22,435.64
Hunter, William S.	29,501.81
Other partners	6,100,155.88
Total	$6,254,210.54

The Permanente Medical Group (a Partnership)
Year Ended June 30, 1961

ADJUSTMENTS TO INCOME

Ordinary income reported in return		$6,823,301.30
Adjustments:		
(a) Payments into trust fund for benefit of partnership	$573,924.60	
(b) Interest income from trust fund	3,355.79	577,280.39
Ordinary income as revised		$7,400,581.69

EXPLANATION OF ADJUSTMENTS

(a) and (b) See explanation of adjustment (a) for the year ended June 30, 1960.

DISTRIBUTION OF INCOME

Name of Partner	Ordinary Income
Basye, James A.	$ 37,250.18
Lynn, Carol (Carol Cook)	19,155.84
Grant, Henry Donald	41,496.80
Fishler, Maurice C.	31,055.26
Hunter, Jessamine S.	25,537.51
Hunter, William S.	32,207.64
Other Partners	7,213,878.46
Total	$7,400,581.69

Form 2848
(Rev. June 1964)

U.S. Treasury Department—Internal Revenue Service

GENERAL POWER OF ATTORN.

IMPORTANT—Please read instructions on reverse before completing this form

Name and address of principal(s)

James A. and Evelyn E. Basye
6114 Oceanview Drive
Oakland, California

hereby appoint(s) (Please read address of appointee(s))

Leonard Marcusson, 1924 Broadway - 6th Floor, Oakland, California;
Franklin C. Stark, Stanley E. Sparrowe and John F. Wells of
Financial Center Building, Oakland, California

as attorney(s) in fact to represent the principal(s) before any office of the Internal Revenue Service with respect to liquidity Internal Revenue tax matter(s) and year(s) or period(s)

Income tax matter for years 1960 through 1965

Said attorney(s) in fact shall, subject to revocation, have full power to perform any and all acts that the principal(s) can perform, including the power to receive (but not to endorse and collect) checks in payment of any refund of Internal Revenue taxes, penalties, or interest, to delegate authority or to substitute another attorney or agent; to execute waivers of restrictions on assessment or collection of deficiencies in tax, to execute consents extending the statutory period for assessment or collection of taxes; to execute a closing agreement under section 7121 of the Internal Revenue Code; to request of a tax holiday or a specific matter; and to execute a protest to a determination of taxes by a district director.

Copies of correspondence addressed to the taxpayer in proceedings involving the above matter(s) should be sent to:

Leonard Marcusson, 1924 Broadway - 6th Floor, Oakland, California
Stark & Champlin, 1100 Financial Center Building, Oakland, California 94612

Any prior powers of attorney filed with this office by the principal(s) relating to the matter(s) and the year(s) or period(s) specified above are hereby revoked.

SIGNATURE IF PRINCIPAL IS INDIVIDUAL OR HUSBAND AND WIFE

Signature of Principal	Date	Signature of Principal	Date
James A. Basye	12-22-64	Evelyn E. Basye	12/22/64

SIGNATURE IF PRINCIPAL IS PARTNERSHIP, ESTATE, CORPORATION, ETC.

Under penalties of perjury, I declare that I have the authority to execute this power of attorney on behalf of the principal.

Signature for Principal	Date	CORPORATE SEAL (If applicable)
Signature for Principal	Title	Date

NOTARIZATION

The above-named principal signing or for the principal(s) personally this day before me and acknowledged this power of attorney to be his/her/their voluntary act and deed.

Signature of Notary	
Dorothy Mathes	
Notary Public, State of California - Principal Office, Alameda County	
My Commission Expires Nov. 13, 1967	
330 West MacArthur Blvd., Oakland, Calif.	

OR WITNESSING

This power of attorney was signed by or for the principal(s) by a person or persons known to, and in the presence of, the two disinterested witnesses whose signatures appear below:

Signature of Witness	Date
Signature of Witness	Date

CERTIFICATION BY DISBARRED ATTORNEY OR AGENT IN LIEU OF WITNESSING OR NOTARIZATION

I certify that I am in good standing and entitled to practice before the Internal Revenue Service (the following is applicable only if the principal is other than an individual or husband and wife) that to the best of my knowledge and belief, the person(s) signing above has/have the authority to execute this power of attorney on behalf of the principal.

Signature of Attorney-in-Fact	Enrollment Card Number	Signature Date or Card

Form 2848 (Rev.)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

[*Caption Omitted*]

Civil No. 44352
Answer

Comes now the defendant, United States of America, and for answer to plaintiffs' complaint herein, admits, denies and alleges as follows:

ANSWER TO FIRST CAUSE OF ACTION

I

Admits the allegations contained in paragraph I, except denies that the Internal Revenue taxes therein referred to were overpaid.

II

Admits the allegations contained in paragraph II.

III

Denies the allegations contained in paragraph III; alleges that a deficiency in income tax in the sum of $1,424.02 together with interest in the sum of $356.70 was assessed on July 2, 1965.

IV

Denies the allegations contained in paragraph IV, except alleges that the amount of the deficiency in tax and interest assessed on July 2, 1965 was prepaid on June 18, 1965.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except admits that no portion of said deficiency of tax and interest have been refunded to plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

ANSWER TO SECOND CAUSE OF ACTION

I

Reaffirms and incorporates by reference every admission, denial and allegation contained in paragraph I of the answer to the first cause of action.

II

Admits the allegations contained in paragraph II.

III

Denies the allegations contained in paragraph III; alleges that a deficiency in income tax in the sum of $1,586.93 together with interest in the sum of $302.30 was assessed on July 2, 1965.

IV

Denies the allegations contained in paragraph IV, except alleges that on June 18, 1965 the plaintiffs prepaid the taxes assessed on July 2, 1965.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except

admits that no portion of said deficiency in tax and interest have been refunded to plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

WHEREFORE, having fully answered each and every allegation contained in plaintiffs' complaint herein, defendant prays judgment against the plaintiffs and in favor of the defendant dismissing plaintiffs' complaint herein with prejudice, and for its costs.

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

This certifies that a copy of the foregoing Answer was mailed on this 13th day of January, 1966, to Stark & Champlin, 1100 Financial Center Building, Oakland, California, 94612, attorneys for the plaintiffs in this action.

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

Notation re Complaints and Answers in Docket Nos. 44353, 44354, 44355, and 44356

The Complaints and Answers in Jack J. Cook and Carol L. Cook v. United States (Docket No. 44353), Maurice C. Fishler and Phyllis H. Fishler v. United States (Docket No. 44354), Henry Donald Grant and Jean M. Grant v. United States (Docket No. 44355), and William S. Hunter and Jessamine S. Hunter v. United States (Docket No. 44356) conform in all relevant respects to the Complaint and Answer in James A. Basye and Evelyn E. Basye v. United States (Docket No. 44352), as set forth above, and for that reason, by agreement of counsel, are not separately set forth in this Appendix.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

Civil No. 44352

Civil No. 44353

Civil No. 44354

Civil No. 44355

Civil No. 44356

[*Caption Omitted*]

STIPULATION AND ORDER FOR CONSOLIDATION OF ACTIONS

IT IS HEREBY AGREED AND STIPULATED by and between the above-named parties to the above-entitled actions, by their respective undersigned attorneys, as follows:

1. That said actions are each civil actions for the refund of internal revenue taxes paid by the plaintiffs and that each action is related to each of the others in that each involves similar questions of fact and one common question of law—to wit: whether certain payments made by the Kaiser Foundation Health Plan, Inc., to a trust established pursuant to a certain trust agreement between said Health Plan and a limited partnership of physicians known as The Permanente Medical Group constituted income includible in the gross incomes of the plaintiffs under the Internal Revenue Code of 1954 for the taxable years at issue in said actions;

2. That consolidation of said actions for trial and for purposes of all proceedings heretofore or hereafter had in said actions will tend to avoid unnecessary costs and delay, will not prejudice any party and will substantially expedite justice in each and all of said actions; and

3. That said actions therefore be consolidated for all purposes by order of the Court.

Dated: March 11, 1966

STARK & CHAMPLIN
By: John F. Banker
JOHN F. BANKER
Attorneys for all Plaintiffs

CECIL F. POOLE
United States Attorney
By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant

ORDER

The Court having duly considered the foregoing stipulation of the parties to the above-entitled actions and approving said stipulation, it is hereby

ORDERED that said actions be and the same hereby are consolidated for all purposes, including discovery heretofore or hereafter undertaken in said actions, pre-trial, trial, and all other proceedings.

Dated: 3/16/66

/s/ Albert C. Wollenberg
ALBERT C. WOLLENBERG
United States District Judge

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

GEORGE W. SOROKOWSKI AND NADIA SOROKOWSKI, PLAINTIFFS, VS. UNITED STATES OF AMERICA, DEFENDANT.	Civil No. 45575 Complaint for Refund of Internal Revenue Taxes

Plaintiffs allege:

I.

Plaintiffs are citizens of the United States and reside in the County of San Francisco, in the Southern Division of the Northern District of California. This Court has jurisdiction and venue of this action for refund of Internal Revenue Taxes overpaid under Title 26, U.S.C. § 7422, Title 28, U.S.C. §§ 1346(a)(1), 1402(a)(1), and the Internal Revenue Laws of the United States of America.

II.

On or about April 15, 1961, plaintiffs filed with defendant their federal income tax return for the year 1960 showing tax due thereon in the amount of $8,215.23. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1961.

III.

On or about May 4, 1966, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $692.86, plus interest.

IV.

On or about April 25, 1966, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs, and on or about May 25, 1966 collected the interest thereon.

V.

On or about June 15, 1966, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit A and is by this reference incorporated herein. On or about August 9, 1966, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1960 in the amount of $692.86, plus interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about April 25, 1966, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $692.86, together with interest provided by law, and costs.

SECOND CAUSE OF ACTION

I.

Plaintiffs incorporate herein by reference paragraph I of their First Cause of Action.

II.

On or about April 15, 1962, plaintiffs filed with defendant their federal income tax return for the year 1961 showing tax due thereon in the amount of $8,601.63. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1961.

III.

On or about May 4, 1966, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $792.70, plus interest.

IV.

On or about April 25, 1966, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs, and on or about May 25, 1966 collected the interest thereon.

V.

On or about June 15, 1966, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit B and is by this reference incorporated herein. On or about August 9, 1966, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1961 in the amount of $792.70, plus interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about April 25, 1966, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $792.70, together with interest provided by law, and costs.

THIRD CAUSE OF ACTION

I.

Plaintiffs incorporate herein by reference paragraph I of their First Cause of Action.

II.

On or about April 15, 1963, plaintiffs filed with defendant their federal income tax return for the year 1962 showing tax due thereon in the amount of $12,281.35. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1963.

III.

On or about May 4, 1966, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $873.42, plus interest.

IV.

On or about April 25, 1966, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs, and on or about May 25, 1966 collected the interest thereon.

V.

On or about June 15, 1966, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit C and is by this reference incorporated herein. On or about August 9, 1966, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1962 in the amount of $873.42, plus interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about April 25, 1966, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $873.42, together with interest provided by law, and costs.

FOURTH CAUSE OF ACTION

I.

Plaintiffs incorporate herein by reference paragraph I of their First Cause of Action.

II.

On or about April 15, 1964, plaintiffs filed with defendant their federal income tax return for the year 1963 showing tax due thereon in the amount of $11,179.73. Plaintiffs paid the tax as shown on said income tax return on or before April 15, 1964.

III.

On or about May 4, 1966, defendant illegally and erroneously assessed against plaintiffs as an alleged deficiency of income tax the sum of $902.69, plus interest.

IV.

On or about April 25, 1966, defendant illegally and erroneously collected the aforesaid deficiency in tax from plaintiffs, and on or about May 25, 1966 collected the interest thereon.

V.

On or about June 15, 1966, plaintiffs filed a claim for refund of tax overpaid, in the amount hereinabove set forth, plus interest thereon. A copy of said refund claim is attached hereto as Exhibit D and is by this reference incorporated herein. On or about August 9, 1966, notice of disallowance of said claim for refund was issued by defendant.

VI.

Plaintiffs have overpaid their income tax for the year 1963 in the amount of $902.69, plus interest.

VII.

No portion of said overpayment of tax and interest has been refunded by defendant to plaintiffs, and no legal offsets or credits exist with respect thereto.

VIII.

Defendant is indebted to plaintiffs in the sum set forth in paragraph VI above, together with interest on said sum from the date of overpayment, on or about April 25, 1966, according to law.

WHEREFORE, plaintiffs demand judgment against defendant for the sum of $902.69, together with interest provided by law, and costs.

Dated: August 25, 1966.

STARK & CHAMPLIN
By John F. Banker
JOHN F. BANKER
Attorneys for Plaintiffs

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Form 843
(Rev. July 1965)

District Director's Stamp
(Date Received)

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
George W. and Nadia Sorokowski

Number and street
3267 Jackson Street

City, town, State, Postal ZIP Code
San Francisco, California 94118

Fill in applicable items—Attach letter size sheets if space is not sufficient

a. Your social security number
547 | 52 | 1067

Wife's number, if joint return
553 | 48 | 8974

b. If an employer, enter employer identification number

c. District in which return (if any) was filed
San Francisco

d. Name and address shown on return, if different from above
George W. & Nadia Sorokowski
2690 Jackson, San Francisco 15, Calif.

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1960, to December 31, 1960

f. Kind of tax
Income

g. Amount of assessment
$692.86 (plus interest pd)

Dates of payment
April 25, 1966

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)

j. Amount to be abated (not applicable to income, estate, or gift taxes)

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached paragraph K, by this reference incorporated herein

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	599.14
2. Estimated tax paid	6,500.00
3. Tax paid with original return	1,116.09
4. Any additional income tax paid	692.86
5. Total tax paid (Add lines 1-4)	8,908.09
6. Less: Your computation of correct tax	8,215.23
7. Amount of overpayment	692.86

8. Amount previously refunded	.....
9. Net overpayment (Enter in item 1 above) (not including interest paid)	692.56

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct. George W. and Nadia Borokowski

Signed by John F. Banker, Attorney in Fact
(Power of Attorney attached)

Dated, June 15, 1966

SEE INSTRUCTIONS ON REVERSE

EXHIBIT A

k. The Commissioner of Internal Revenue assessed an income tax deficiency of $692.86 for the year 1960, an income tax deficiency of $792.70 for the year 1961, an income tax deficiency of $873.42 for the year 1962, and an income tax deficiency of $902.69 for the year 1963 against taxpayers Drs. George W. and Nadia Sorokowski. The basis of the deficiency assessments was set forth in the "Preliminary Statement" Form 1907 (Schedules 1-8 attached), dated April 18, 1966. A copy of that statement is attached hereto as Exhibit "A". Taxpayers paid these assessments on April 25, 1966. Interest thereon in the amount of $668.99 was paid by taxpayers on May 25, 1966.

A summary of the facts upon which this claim is based is as follows:

Taxpayer Nadia Sorokowski was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians (hereinafter called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group. Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960, 1961, 1962 and 1963 reported income on the cash receipts and disbursements basis.

Taxpayer Nadia Sorokowski had no right to receive any money or other benefits from the trust during the years 1960, 1961, 1962 and 1963; her expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Sorokowski's participation in the Retirement Plan. Subsequent to the years involved, Dr. Sorokowski terminated her association with Medical Group and her expectancy of future benefits under the trust was thereupon forfeited. Dr. Sorokowski has not and never will receive any benefit of any kind whatsoever by virtue of the 1960, 1961, 1962 and 1963 payments by Health Plan into the Trust.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Sorokowski was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Sorokowski did not during 1960, 1961, 1962 or 1963, nor can she at any time in the future, realize any income as an individual participant in said Retirement Plan, because neither cash nor its equivalent was or can be hereafter actually or constructively received by her nor did she or can she hereafter receive or realize income in any manner or form as a result of her participation in the Retirement Plan.

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Form 843
(Rev. July 1965)

District Director's Stamp
(Date Received)

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
George W. and Nadia Sorokowski

Number and street
3267 Jackson Street

City, town, State, Postal ZIP Code
San Francisco, California 94118

Fill in applicable items—Attach letter size sheets if space is not sufficient

a. Your social security number
547 | 52 | 1067

Wife's number, if joint return
553 | 48 | 8974

b. If an employer, enter employer identification number

c. District in which return (if any) was filed
San Francisco

d. Name and address shown on return, if different from above
2795 Vallejo Street, S.F. 23

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1961 to December 31, 1961

f. Kind of tax
Income

g. Amount of assessment
$792.70 (Plus Interest Paid)

Dates of payment
April 25, 1966

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)
$792.70 (Plus Interest Paid)

j. Amount to be abated (not applicable to income, estate, or gift taxes)
$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached paragraph K, by this reference incorporated herein

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	
2. Estimated tax paid	7,000.00
3. Tax paid with original return	1,601.63
4. Any additional income tax paid	792.70
5. Total tax paid (Add lines 1-4)	9,394.33
6. Less: Your computation of correct tax	8,601.63
7. Amount of overpayment	792.70

8. Amount previously refunded	.....
9. Net overpayment (Enter in item 1 above) (not including interest paid)	792.70

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct. George W. and Nadia Sorokowski

Signed by John F. Banker, Attorney in Fact
(Power of Attorney attached)

Dated, June 15, 1966

SEE INSTRUCTIONS ON REVERSE

EXHIBIT B

k. The Commissioner of Internal Revenue assessed an income tax deficiency of $692.86 for the year 1960, an income tax deficiency of $792.70 for the year 1961, an income tax deficiency of $873.42 for the year 1962, and an income tax deficiency of $902.69 for the year 1963 against taxpayers Drs. George W. and Nadia Sorokowski. The basis of the deficiency assessments was set forth in the "Preliminary Statement" Form 1907 (Schedules 1-8 attached), dated April 18, 1966. A copy of that statement is attached hereto as Exhibit "A". Taxpayers paid these assessments on April 25, 1966. Interest thereon in the amount of $668.99 was paid by taxpayers on May 25, 1966.

A summary of the facts upon which this claim is based is as follows:

Taxpayer Nadia Sorokowski was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California non-profit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians (hereinafter called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group. Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960, 1961, 1962 and 1963 reported income on the cash receipts and disbursements

basis. Taxpayer Nadia Sorokowski had no right to receive any money or other benefits from the trust during the years 1960, 1961, 1962 and 1963; her expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Sorokowski's participation in the Retirement Plan. Subsequent to the years involved, Dr. Sorokowski terminated her association with Medical Group and her expectancy of future benefits under the trust was thereupon forfeited. Dr. Sorokowski has not and never will receive any benefit of any kind whatsoever by virtue of the 1960, 1961, 1962 and 1963 payments by Health Plan into the Trust.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Sorokowski was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Sorokowski did not during 1960, 1961, 1962 or 1963, nor can she at any time in the future, realize any income as an individual participant in said Retirement Plan, because neither cash nor its equivalent was or can be hereafter actually or constructively received by her nor did she or can she hereafter receive or realize income in any manner or form as a result of her participation in the Retirement Plan.

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Form 843
(Rev. July 1965)

District Director's Stamp
(Date Received)

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
George W. and Nadia Sorokowski

Number and street
3267 Jackson Street

City, town, State, Postal ZIP Code
San Francisco, California 94118

Fill in applicable items—Attach letter size sheets if space is not sufficient

a. Your social security number
547 | 52 | 1067

Wife's number, if joint return
553 | 48 | 8974

b. If an employer, enter employer identification number

c. District in which return (if any) was filed
San Francisco

d. Name and address shown on return, if different from above
2795 Vallejo Street
San Francisco 23, California

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1962, to December 31, 1962

f. Kind of tax
Income

g. Amount of assessment
$873.42 (Plus interest paid)

Dates of payment
April 25, 1966

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)
$873.42 (Plus interest paid)

j. Amount to be abated (not applicable to income, estate, or gift taxes)
$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached paragraph K, by this reference incorporated herein

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	.....
2. Estimated tax paid	8,000.00
3. Tax paid with original return	4,281.35
4. Any additional income tax paid	873.42
5. Total tax paid (Add lines 1-4)	13,154.77
6. Less: Your computation of correct tax	12,281.35
7. Amount of overpayment	873.42

8. Amount previously refunded	.....
9. Net overpayment (Enter in item 1 above) (not including interest paid)	873.42

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct. George W. and Nadia Sorokowski

Signed by John F. Banker, Attorney in Fact
(Power of Attorney attached)

Dated, June 15, 1946

SEE INSTRUCTIONS ON REVERSE

EXHIBIT C

k. The Commissioner of Internal Revenue assessed an income tax deficiency of $692.86 for the year 1960, an income tax deficiency of $792.70 for the year 1961, an income tax deficiency of $873.42 for the year 1962, and an income tax deficiency of $902.69 for the year 1963 against taxpayers Drs. George W. and Nadia Sorokowski. The basis of the deficiency assessments was set forth in the "Preliminary Statement" Form 1907 (Schedules 1-8 attached), dated April 18, 1966. A copy of that statement is attached hereto as Exhibit "A". Taxpayers paid these assessments on April 25, 1966. Interest thereon in the amount of $668.99 was paid by taxpayers on May 25, 1966.

A summary of the facts upon which this claim is based is as follows:

Taxpayer Nadia Sorokowski was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians (hereinafter called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group. Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960, 1961, 1962 and 1963 reported income on the cash receipts and disbursements basis. Taxpayer Nadia Sorokowski had no right to receive any money

or other benefits from the trust during the years 1960, 1961, 1962 and 1963; her expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Sorokowski's participation in the Retirement Plan. Subsequent to the years involved, Dr. Sorokowski terminated her association with Medical Group and her expectancy of future benefits under the trust was thereupon forfeited. Dr. Sorokowski has not and never will receive any benefit of any kind whatsoever by virtue of the 1960, 1961, 1962 and 1963 payments by Health Plan into the Trust.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Sorokowski was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Sorokowski did not during 1960, 1961, 1962 or 1963, nor can she at any time in the future, realize any income as an individual participant in said Retirement Plan, because neither cash nor its equivalent was or can be hereafter actually or constructively received by her nor did she or can she hereafter receive or realize income in any manner or form as a result of her participation in the Retirement Plan.

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

CLAIM

TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Form 843
(Rev. July 1965)

District Director's Stamp
(Date Received)

The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps
George W. and Nadia Sorokowski

Number and street
1267 Jackson Street

City, town, State, Postal ZIP Code
San Francisco, California 94118

Fill in applicable items—Attach letter size sheets if space is not sufficient

a. Your social security number
547 | 52 | 1067

Wife's number, if joint return
553 | 48 | 8974

b. If an employer, enter employer identification number

c. District in which return (if any) was filed
San Francisco

d. Name and address shown on return, if different from above
George W. and Nadia Sorokowski
726 # 1 Camino Del Mar, San Francisco, Calif. 94121

e. Period—if for tax reported on annual basis, prepare separate form for each taxable year
From January 1, 1963, to December 31, 1963

f. Kind of tax
Income

g. Amount of assessment
$902.69 (Plus Interest Paid)

Dates of payment
April 25, 1966

h. Date stamps were purchased from Government

i. Amount to be refunded (If income tax, complete computation below)
$902.69 (Plus interest paid)

j. Amount to be abated (not applicable to income, estate, or gift taxes)
$

k. The claimant believes that this claim should be allowed for the following reasons:

See Attached paragraph K, by this reference incorporated herein

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld	.....
2. Estimated tax paid	6,039.90
3. Tax paid with original return	5,139.83
4. Any additional income tax paid	902.69
5. Total tax paid (Add lines 1-4)	12,082.42
6. Less: Your computation of correct tax	11,179.73
7. Amount of overpayment	902.69

8. Amount previously refunded.....
9. Net overpayment (Enter in item 1 above) (not including interest paid) 902.89

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct. George W. and Nadia Sorokowski

Signed by John F. Banker, Attorney in Fact
(Power of Attorney attached)

Dated, June 15, 1966

SEE INSTRUCTIONS ON REVERSE

EXHIBIT D

k. The Commissioner of Internal Revenue assessed an income tax deficiency of $692.86 for the year 1960, an income tax deficiency of $792.70 for the year 1961, an income tax deficiency of $873.42 for the year 1962, and an income tax deficiency of $902.69 for the year 1963 against taxpayers Dra. George W. and Nadia Sorokowski. The basis of the deficiency assessments was set forth in the "Preliminary Statement" Form 1907 (Schedules 1-8 attached), dated April 18, 1966. A copy of that statement is attached hereto as Exhibit "A". Taxpayers paid these assessments on April 25, 1966. Interest thereon in the amount of $668.99 was paid by taxpayers on May 25, 1966.

A summary of the facts upon which this claim is based is as follows:

Taxpayer Nadia Sorokowski was a participant in the Retirement Plan for the Permanente Medical Group. Said Retirement Plan was established July 1, 1959, as the result of negotiations between two independent organizations, Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereinafter called "Health Plan"), on the one hand, and The Permanente Medical Group, a partnership of physicians (hereinafter called "Medical Group"), on the other hand. Said Retirement Plan was not established by Medical Group alone, nor for its benefit alone, but was established in good faith to serve the independent, and in some respects conflicting interests of Health Plan, Medical Group and the participating physicians.

Pursuant to said Retirement Plan, a trust was established to which Health Plan made certain contributions. No contributions were made to the trust by Medical Group. Individual participating physicians may become entitled to retirement benefits from said trust upon fulfilling certain conditions. Such individual physicians are the only beneficiaries of said trust, and Medical Group has no right, either present or prospective, in the funds contributed by Health Plan to the trust. No income in cash or its equivalent was actually or constructively received by Medical Group, nor was any sum properly accruable to Medical Group, nor did Medical Group receive or realize income in any manner or form, as the result of contributions by Health Plan to the trust.

Taxpayers' returns for 1960, 1961, 1962 and 1963 reported income on the cash receipts and disbursements basis. Taxpayer Nadia Sorokowski had no right to receive

any money or other benefits from the trust during the years 1960, 1961, 1962 and 1963; her expectancy of future benefits under said Retirement Plan was dependent upon fulfilling certain conditions precedent, and was subject to forfeiture upon the happening of various contingencies. No income in cash or its equivalent was actually or constructively received by taxpayers from the trust, or otherwise, nor did taxpayers receive or realize income in any manner or form as a result of Dr. Sorokowski's participation in the Retirement Plan. Subsequent to the years involved, Dr. Sorokowski terminated her association with Medical Group and her expectancy of future benefits under the trust was thereupon forfeited. Dr. Sorokowski has not and never will receive any benefit of any kind whatsoever by virtue of the 1960, 1961, 1962 and 1963 payments by Health Plan into the Trust.

Copies of the documents supporting the foregoing factual summary have been furnished to the Internal Revenue Service. Additional copies will be furnished on request.

Taxpayers claim this refund on the grounds that the partnership of which Dr. Sorokowski was a member did not receive nor realize income in any manner or form as a result of the establishment of said Retirement Plan nor as a result of any payments to the trust; that no part of the payments to said trust were accruable to the partnership; that the gross income as reported on taxpayers' return is correct and that the Commissioner's adjustments to their returns as set forth in Exhibit "A" is erroneous.

Taxpayers claim this refund on the further ground that Dr. Sorokowski did not during 1960, 1961, 1962 or 1963, nor can she at any time in the future, realize any income as an individual participant in said Retirement Plan, because neither cash nor its equivalent was or can be hereafter actually or constructively received by her nor did she or can she hereafter receive or realize income in any manner or form as a result of her participation in the Retirement Plan.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

Civil No. 45575
Answer

Comes now the defendant, United States of America, and for answer to plaintiffs' complaint herein, states to the Court that:

ANSWER TO FIRST CAUSE OF ACTION

I

Admits the allegations contained in paragraph I, except denies the taxes therein referred to were overpaid.

II

Admits the allegations contained in the first sentence of paragraph II (beginning on line 26 and ending with the figures $8,215.23 on line 28, page 1). It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence (beginning with the word "plaintiffs" on line 28 and ending on line 29, page 1).

III

Admits the allegations contained in paragraph III, except denies that the assessment therein referred to was illegally and erroneously made against plaintiffs.

IV

Admits the allegations contained in paragraph IV, except denies that the deficiency therein referred to was illegally and erroneously collected.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except admits that no portion of the tax and interest therein referred to has been refunded to the plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

ANSWER TO SECOND CAUSE OF ACTION

I

It reaffirms and incorporates herein by reference every admission, denial and allegation contained in paragraph I of its answer to first cause of action.

II

It admits the allegations contained in the first sentence of paragraph II (beginning on line 31, page 2 and ending with the figures $8,601.63 on line 1, page 3). It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence (beginning with the word "Plaintiffs" on line 1 and ending on line 2, page 3).

III

Admits the allegations contained in paragraph III, except denies that the assessment therein referred to was illegally and erroneously made against plaintiffs.

IV

Admits the allegations contained in paragraph IV, except denies that the deficiency therein referred to was illegally and erroneously collected.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and

further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except admits that no portion of the tax and interest therein referred to has been refunded to the plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

ANSWER TO THIRD CAUSE OF ACTION

I

It reaffirms and incorporates herein by reference every admission, denial and allegation contained in paragraph I of its answer to first cause of action.

II

It admits the allegations contained in the first sentence of paragraph II (beginning on line 6 and ending with the figures $12,281.35 on line 8, page 4). It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence (beginning with the word "Plaintiffs" on line 8 and ending on line 9, page 4).

III

Admits the allegations contained in paragraph III, except denies that the assessment therein referred to was illegally and erroneously made against plaintiffs.

IV

Admits the allegations contained in paragraph IV, except denies that the deficiency therein referred to was illegally and erroneously collected.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except admits that no portion of the tax and interest therein referred to has been refunded to the plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

ANSWER TO FOURTH CAUSE OF ACTION

I

It reaffirms and incorporates herein by reference every admission, denial and allegation contained in paragraph I of its answer to first cause of action.

II

It admits the allegations contained in the first sentence of paragraph II (beginning on line 11 and ending with the figures $11,179.73 on line 13, page 5). It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence (beginning with the word "Plaintiffs" on line 13 and ending on line 14, page 5).

III

Admits the allegations contained in paragraph III, except denies that the assessment therein referred to was illegally and erroneously made against plaintiffs.

IV

Admits the allegations contained in paragraph IV, ex-

cept denies that the deficiency therein referred to was illegally and erroneously collected.

V

Admits the allegations contained in paragraph V, except denies that the taxes therein referred to were overpaid and further denies each and every substantive allegation contained in said claim for refund.

VI

Denies the allegations contained in paragraph VI.

VII

Denies the allegations contained in paragraph VII, except admits that no portion of the tax and interest therein referred to has been refunded to the plaintiffs.

VIII

Denies the allegations contained in paragraph VIII.

WHEREFORE, having fully answered each and every allegation contained in plaintiffs' complaint herein, defendant prays judgment against the plaintiffs and in favor of the defendant dismissing plaintiffs' complaint herein, with prejudice and for its costs.

CECIL F. POOLE
United States Attorney
By: Richard L. Carico
RICHARD L. CARICO
Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

A copy of the foregoing Answer was mailed this 24th day of October, 1966, to John F. Banker, Esq., Stark & Champlin, 1100 Financial Center Building, Oakland, California 94612.

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 45575
Stipulation for and Order Granting Leave for Defendant to File Counter-Claim by Supplemental Pleading

IT IS HEREBY AGREED, STIPULATED AND REQUESTED by and between the parties to this action, by their respective undersigned attorneys, that the Court grant defendant leave, pursuant to Rules 13(e) and 15(d) of the Federal Rules of Civil Procedure, to file a counterclaim against plaintiffs (a copy of which is attached hereto as Exhibit A) by supplemental pleading, for the reasons: that the events giving rise to the claim set forth therein have happened since the date of defendant's answer; that the claims asserted in the complaint and the claim asserted in defendant's counterclaim involve a common question of fact and law; that the issue raised by said counterclaim is integrally related to and its proper resolution is dependent upon the disposition of the issue raised by the original pleadings herein; and that it is in the interest of justice that all issues between plaintiffs and defendant be litigated in this action. Plaintiffs will serve their reply to said counterclaim within twenty (20) days after service of a copy of said counterclaim upon them.

Dated: Apr. 28, 1967

CECIL F. POOLE
United States Attorney
By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant

STARK & CHAMPLIN
By: John F. Banker
JOHN F. BANKER
Attorneys for Plaintiffs

Approved and So Ordered:

Dated: April 28, 1967

/s/ Alfonso J. Zirpoli
ALFONSO J. ZIRPOLI
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

Civil No. 45575
Counterclaim of Defendant

In counterclaim against the plaintiffs GEORGE W. SOROKOWSKI and NADIA SOROKOWSKI, the defendant UNITED STATES OF AMERICA alleges:

1. This counterclaim is made upon the authorization and direction of duly-appointed delegates of the Secretary of the Treasury of the United States and of the Attorney General of the United States, pursuant to Section 7401 of Title 26, United States Code.

2. Jurisdiction of the subject matter of this counterclaim is conferred upon this Court by Sections 7402(a) and 7405(b) of Title 26, United States Code.

3. This counterclaim is timely made within the period of limitation prescribed by Section 6532(b) of Title 26, United States Code.

4. On or about November 10, 1966, representatives of defendant's District Director of Internal Revenue at San Francisco determined, after reexamination of the plaintiffs' taxable year of 1963, that plaintiffs' federal income tax liability for said year had been overassessed and overpaid in the amount of $3,298.58. On or about December 6, 1966, plaintiffs were given notice of said determination by letter in behalf of said Director mailed to them in care of their attorneys of record.

5. The reason for the determination of the overassessment referred to in paragraph 4 above, was the allowance by said Director of an additional deduction from plaintiffs' taxable income theretofore determined for 1963, which deduction was allowed under Section 165 of the Internal Revenue Code of 1954 (Title 26, United States Code) as a loss in respect of the forfeiture in 1963 by the plaintiff Nadia Sorokowski of rights to moneys totalling $6,797.32, which moneys had been previously taxed to plaintiffs in their taxable years 1960 through 1963 as a portion of said Nadia Sorokowski's share of partnership income of that certain partnership of physicians doing business as the

"Permanente Medical Group" of which she was a partner during said years.

6. During the month of September 1963, the plaintiff Nadia Sorokowski terminated her membership in the partnership referred to in paragraph 5 above, and by said termination she forfeited all rights to moneys theretofore accumulated to her account as a participant and beneficiary under that certain trust know as the "Permanente Medical Group Retirement Plan" established in 1959 by agreement between said partnership and the Kaiser Foundation Health Plan, Inc., and the Bank of America National Trust and Savings Association. It was in respect of said forfeiture of said plaintiff's rights under said trust that the determination as described in paragraphs 4 and 5 above was made in behalf of defendant's said District Director.

7. On or about March 8, 1967, defendant's said District Director mailed to plaintiffs his formal notice of the adjustment made to their 1963 tax liability in respect of the determination referred to in paragraph 4 above, together with United States Treasury Check No. 57,128,129 drawn payable to the order of plaintiffs in the face amount of $3,875.31 in refund of the determined overpayment of tax and interest for said year plus statutory interest payable thereon.

8. The legal correctness of the refund made to plaintiffs in behalf of defendant as set forth in paragraph 7 above is dependent upon the final adjudication of the claims for the taxable years 1960 through 1963 asserted by plaintiffs in their complaint in this action. To wit: if plaintiffs' claims against defendant herein are found and concluded by the Court to be correct, then it will necessarily follow that defendant's said refund paid to plaintiffs be found and concluded to be erroneous and should be ordered set off against plaintiffs' said claims in determining the amount of the judgment against defendant to which they might otherwise be entitled herein; if plaintiffs' said claims are found and concluded to be erroneous, then defendant's said refund to plaintiffs will necessarily be found and concluded to have been correctly made and relief need not be granted on this counterclaim. This counterclaim is thus protective of defendant's rights under its legal position at issue in this action and is contingent upon the resolution of the primary question (the issue joined by the original pleadings herein) of whether moneys paid into the trust referred to in paragraph 6 above by the Kaiser Foundation

Health Plan, Inc., and therein allocated to the account of the plaintiff Nadia Sorokowski constituted income to the partnership of which she was a member and thereby constituted income taxable to her in each of the years in which such sums were so paid in and allocated.

WHEREFORE, the defendant United States of America prays in the alternative:

A. That if the Court finds and concludes that plaintiffs' claims in this action are correct as a matter of fact and law, the Court thereupon find and conclude that defendant's refund paid to plaintiffs in 1967 in respect of their taxable year 1963 as hereinabove alleged was erroneous and order and adjudge that the amount of said refund be set off against said claims of plaintiffs in determining the amount of the judgment for plaintiffs; or

B. That if the Court finds and concludes that plaintiffs' claims are erroneous as a matter of fact and law, the Court thereupon find and conclude that defendant's said refund to plaintiffs was correct and order and adjudge that plaintiffs take nothing on their complaint and that defendant take nothing on this counterclaim; and

C. That defendant have and recover its costs in this action and such other and further relief as the Court deems just and equitable in the premises.

CECIL F. POOLE
United States Attorney
By: /s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

This certifies that a copy of the foregoing Counterclaim of Defendant was this date mailed to Stark & Champlin, the attorneys of record for plaintiffs, addressed to 1100 Financial Center Building, Oakland, California 94612.

Dated: May 3, 1967

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

[*Caption Omitted*]

Civil No. 44352

Civil No. 44353

Civil No. 44354

Civil No. 44355

Civil No. 44356

Civil No. 45575

STIPULATION AND ORDER FOR CONSOLIDATION OF ACTIONS

IT IS HEREBY AGREED AND STIPULATED by and between the above named parties to the above entitled actions, by their respective undersigned attorneys, as follows:

1. That said actions, including *George W. Sorokowski and Nadia Sorokowski v. United States of America*, No. 45575, are each civil actions for the refund of internal revenue taxes paid by the plaintiffs and that each action is related to each of the others in that each involves similar questions of fact and one common question of law—to wit: whether certain payments made by the Kaiser Foundation Health Plan, Inc., to a trust established pursuant to a certain trust agreement between said Health Plan and a limited partnership of physicians known as The Permanente Medical Group constituted income includible in the gross incomes of the plaintiffs under the Internal Revenue Code of 1954 for the taxable years at issue in said actions;

2. That consolidation of *George W. Sorokowski and Nadia Sorokowski v. United States of America*, No. 45575 with the above captioned actions for trial and for purposes of all proceedings heretofore or hereafter had in said actions will tend to avoid unnecessary costs and delay, will not prejudice any party and will substantially expedite justice in each and all of said actions; and

3. That said actions, including *George W. Sorokowski and Nadia Sorokowski v. United States of America*, No.

45575, therefore be consolidated for all purposes by order of the Court.

Dated: March 8, 1967

STARK & CHAMPLIN
By John F. Banker
JOHN F. BANKER
Attorneys for all Plaintiffs

CECIL F. POOLE
United States Attorney
By John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorney for Defendant

ORDER

The Court having duly considered the foregoing stipulation of the parties to the above entitled actions and approving said stipulation, it is hereby

ORDERED that said actions be and the same hereby are consolidated for all purposes, including discovery heretofore or hereafter undertaken in said actions, pre-trial, trial and all other proceedings.

Dated: May 8, 1967

/s/ Alfonso J. Zirpoli
ALFONSO J. ZIRPOLI
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

Civil No. 45575
Answer to Counterclaim

Come now the plaintiffs, George W. Sorokowski and Nadia Sorokowski, and for answer to defendant's counterclaim herein, admit, deny and allege as follows:

1. Admit the allegations of paragraphs 1, 2 and 3.

2. Plaintiffs have no information or belief sufficient to enable them to answer the allegations of paragraph 4, and basing their denial on that ground, deny each and every allegation therein contained, except that plaintiffs admit that defendant gave them notice of a proposed refund by letter mailed to them in care of their attorneys of record on or about December 6, 1966.

3. Answering paragraph 5, plaintiffs admit that the amount of the "additional deduction" allowed by the District Director of Internal Revenue was equal to the amount of moneys previously taxed to plaintiffs, as a result of notices of deficiency in income tax which are the basis for plaintiffs' complaint for refund of taxes overpaid for the taxable years 1960 through 1963. Except as herein admitted, plaintiffs deny each and every, all and singular, the allegations contained in paragraph 5 and particularly deny that "the reason for the determination of the overassessment" was as stated in paragraph 5.

4. Answering paragraph 6, plaintiffs admit that during the month of September, 1963 the plaintiff Nadia Sorokowski terminated her membership in the Permanente Medical Group Partnership. Except as specifically admitted, plaintiffs deny each and every allegation contained in said paragraph 6, and plaintiffs specifically deny that any moneys whatsoever had "accumulated to" the account of plaintiff Nadia Sorokowski as a participant and beneficiary under that certain trust known as the Permanente Medical Group Retirement Plan; and plaintiffs further allege that the interest of plaintiff Nadia Sorokowski in said Permanente Medical Group Retirement Plan as of the time her membership in the Permanente Medical Group partnership

terminated, was non-vested, contingent, inchoate and wholly uncertain. Hence plaintiff forfeited a mere inchoate expectancy by the termination of her membership in said partnership and did not forfeit "all rights to moneys theretofore accumulated to her acount."

5. Answering paragraph 7, plaintiffs admit that the check therein referred to was transmitted to plaintiffs on or about March 8, 1967, and allege that said check was deposited in trust as more fully described in the letter of plaintiffs' counsel dated May 5, 1967 to the United States Attorney, a copy of which is attached herewith, designated Exhibit "A" and by this reference incorporated herein.

6. Answering paragraph 8, plaintiffs allege that they were not entitled to the said refund, that said refund was erroneous, and that in determining the amount of judgment to which plaintiffs are entitled as against defendant, the said refund should be determined to be a set-off in favor of defendant. Except as herein alleged, plaintiffs deny each and every, all and singular, the allegations contained in said paragraph 8.

WHEREFORE, plaintiffs pray judgment as follows:

1. That the court find and conclude that plaintiffs' claims in this action as stated in the complaint are correct as a matter of fact and law and that the court find and conclude that the said refund hereinabove referred to was erroneous, and order and adjudge that the amount of said refund be set-off against said claims of plaintiffs in determining the amount of the judgment for plaintiffs.

Dated: May 8, 1967.

STARK & CHAMPLIN
By John F. Banker
JOHN F. BANKER
Attorneys for Plaintiffs

May, 5, 1967

Cecil F. Poole
United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

Attention John M. Youngquist
Assistant United States Attorney

Dear Mr. Youngquist:

Sorokowski v. United States
Civil No. 45575

We have received United States Treasury check No. 57,128,129 drawn payable to the order of George W. and Nadia Sorokowski in the amount of $3,875.31, and representing a purported refund of income taxes for the year 1963. As you are aware, we believe that such refund for 1963 was made in error, and that the Sorokowskis are entitled to recover only the sums requested in their pending suit for refund of income taxes, for the years involved in that suit, and for the reasons therein alleged. Accordingly, we have deposited said check in a trust account pending a final judgment in the above action. If you prefer, we will be happy to return the money immediately so that the United States may retain it during the pendency of the above action.

We frankly do not understand why this check was issued in the first place. It represents a refund which the Sorokowskis have never claimed, and to which they do not believe they are entitled. We were certainly not aware that it was the general policy of the United States to volunteer such unsolicited refunds of income taxes.

Cordially yours,
STARK & CHAMPLIN
By John F. Banker

JFB: bbc
cc: District Director, Internal Revenue Service

EXHIBIT A

CERTIFICATE OF SERVICE BY MAIL

I am a citizen of the United States and am employed in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action. My business address is c/o Stark & Champlin, Financial Center Building, Oakland, California 94612.

On May 11, 1967 I served the within

ANSWER TO COUNTERCLAIM

by placing three true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Oakland, California, addressed as follows:

Cecil F. Poole
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

Executed on May 11, 1967, at Oakland, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Beryl B. Clawson
BERYL B. CLAWSON

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Consolidated Actions

Civil No. 44352

Civil No. 44353

Civil No. 44354

Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issue

Civil No. 44355

Civil No. 44356

Civil No. 45575

IT IS HEREBY AGREED AND STIPULATED by and between the parties in the above-entitled consolidated actions, by their respective undersigned attorneys, as follows:

I

1. These consolidated actions shall be submitted to the Court for adjudication without pre-trial proceedings, pursuant to Rules 7 and 9 of the Court's Rules of Civil Practice, upon the Agreed Statement of Facts and Statement of Issue hereinbelow set forth in final and complete form, upon the exhibits attached hereto, and upon written briefs to be filed with and oral argument to be heard by the Court as hereinbelow agreed.

2. Plaintiffs and defendant shall simultaneously serve and file their opening trial briefs within forty-five (45) days after the filing of this stipulation. Supplemental or reply briefs shall be served and filed in accordance with the Court's direction after hearing.

3. The defendant shall, within forty (40) days after the filing of this stipulation, apply to the Court's Calendar Judge to set these consolidated actions for hearing on the Short Cause Section of the Civil Trial Calendar at a date and time certain at least fifty (50) days following the filing of this stipulation.

II

AGREED STATEMENT OF FACTS

The parties agree that the following stated facts (together with evidentiary exhibits referred to and identified herein and attached hereto) are relevant and material to the resolution of the controversy between all plaintiffs and defendant presented in these actions. This statement of facts is complete, and there are no material issues of fact remaining in dispute. It is further agreed that the attached exhibits, which are photocopies of original documents, be received in evidence with the same force and effect as original documents. This statement and the exhibits submitted shall govern the course of decision in these actions unless amended by order of the Court upon application of a party or parties in order to prevent manifest injustice.

1. The plaintiffs in No. 44352, JAMES A. BASYE and EVELYN E. BASYE, were husband and wife during the years in question in their case (calendar years 1960 and 1961), resided in Alameda County, California, and filed timely joint returns of their federal income taxes for said years with the defendant's District Director of Internal Revenue at San Francisco.

2. The plaintiffs in No. 44353, JACK J. COOK and CAROL LYNN COOK, were husband and wife during the year in question in their case (calendar year 1961), resided in Contra Costa County, California, and filed a timely joint return of their federal income tax for said year with the defendant's District Director of Internal Revenue at San Francisco.

3. The plaintiffs in No. 44354, MAURICE C. FISHLER and PHYLLIS H. FISHLER, were husband and wife during the years in question in their case (calendar years 1960 and 1961), resided in Alameda County, California, and filed timely joint returns of their federal income taxes for said years with the defendant's District Director of Internal Revenue at San Francisco.

4. The plaintiffs in No. 44355, HENRY DONALD GRANT and JEAN M. GRANT, were husband and wife during the years in question in their case (calendar years 1960 and 1961), and resided in Alameda County, California. They each filed a timely return of their respective separate federal income taxes for 1960 and they together filed a timely joint return of their federal income tax for 1961

with the defendant's District Director of Internal Revenue at San Francisco.

5. The plaintiffs in No. 44356, WILLIAM S. HUNTER and JESSAMINE S. HUNTER, were husband and wife during the years in question in their case (calendar years 1960 and 1961), resided in San Francisco, California, and filed timely joint returns of their federal income taxes for said years with the defendant's District Director of Internal Revenue at San Francisco.

6. The plaintiffs in No. 45575, GEORGE W. SOROKOWSKI and NADIA SOROKOWSKI, were husband and wife during the years in question in their case (calendar years 1960, 1961, 1962, and 1963), resided in San Francisco, California, and filed timely joint returns of their federal income taxes for said years with the defendant's District Director of Internal Revenue at San Francisco.

7. Each of these consolidated actions was commenced in this Court by the respective plaintiffs seeking judgment against defendant for the refund of certain sums which plaintiffs claim to have overpaid to defendant in respect of their federal income taxes for the tax years in question. Before commencing these actions, all of the respective plaintiffs filed with defendant's District Director written claims for refund of the sums claimed to have been overpaid within two years after their respective payments of the disputed sums. Those claims for refund were in due course each rejected by the Director by written notices mailed to the respective plaintiffs, and the complaints in these actions were each filed within two years after plaintiffs' receipts of said notices.

8. The claimed overpayments in each case cover taxes and interest paid by the respective plaintiffs after examinations and determinations were made by defendant's Commissioner of Internal Revenue in each case as to deficiencies in the taxes returned by the plaintiff-taxpayers for each of the years involved. The tax deficiencies determined by the Commissioner and the overpayments claimed by the plaintiffs arose out of factual circumstances which are common to each of these consolidated cases.

9. It is agreed that all procedural and administrative requirements under the Internal Revenue Code of 1954 were met and satisfied in each case with respect to examination, determination, notice, protest, administrative review, assessment and collection of the tax deficiences in-

volved, and that the sole and common controversy presented in each of these consolidated actions is whether or not the administratively-determined tax deficiencies are erroneous.

10. The following plaintiffs are each holders of the degree of Doctor of Medicine and were each, during the years involved in their respective cases, practicing physicians duly licensed to practice medicine in the State of California: JAMES A. BASYE, CAROL LYNN COOK, MAURICE C. FISHLER, HENRY DONALD GRANT, WILLIAM S. HUNTER, JESSAMINE S. HUNTER, and NADIA SOROKOWSKI. (These plaintiffs are hereafter sometimes collectively referred to as the doctors.)

11. The doctors were each, during the years involved in their respective cases, general partners in a limited partnership of physicians organized in 1949 to practice medicine in the State of California under the name of "The Permanente Medical Group" (hereafter sometimes referred to as Medical Group or the partnership). The terms of the partnership are all set forth in and controlled by the Articles of Partnership in effect during the years involved in these cases, a true copy of which is attached hereto as *Exhibit A*. The partnership used the accrual method of accounting and filed federal partnership information returns of income on a fiscal year basis ending June 30th during the periods involved in these cases.

12. Prior to the years involved in these cases, The Permanente Medical Group contracted with Kaiser Foundation Health Plan, Inc., a California nonprofit corporation (hereafter sometimes referred to as Health Plan), to provide medical services to members of Health Plan in its Northern California Region. Health Plan operates a contractual membership program providing pre-paid hospital and medical care to its dues-paying members in California and other regions of the Western United States. In order to provide medical services to members in its Northern California Region, Health Plan contracted in writing with Medical Group for the services of physicians to be provided exclusively by Medical Group. The written contract between Health Plan and Medical Group which was in effect for the years in question in these cases is entitled "Medical Service Agreement/Northern California Region/July 1959—June 1961," and a true copy is attached hereto as *Exhibit B*. During the fiscal year ended June 30, 1960, the

Health Plan had approximately 359,000 dues-paying members in its Northern California Region entitled to medical services under their membership contracts, and Medical Group had approximately 205 physician-partners and approximately 41 physician-employees of the partnership.

13. As well as contracting for basic compensation to be paid by Health Plan to Medical Group for medical services (Ex. B, Art. H, pp. 27-29), the parties contracted in the medical service agreement for Health Plan to make payments to a Medical Group "savings and retirement plan or other deferred compensation plan approved by Health Plan" (Ex. B, § H-4, p. 29). On or about December 30, 1959, effective as of July 1, 1959, a "Retirement Plan for The Permanente Medical Group" was established by agreement among Health Plan, Medical Group and the Bank of America National Trust and Savings Association, as trustee. The plan resulted from negotiations between Health Plan and Medical Group and was not unilaterally established by Medical Group. The plan was fully integrated and embodied in a written agreement, entitled "Trust Agreement/Retirement Plan for The Permanente Medical Group," a true copy of which is attached hereto as *Exhibit C*.

14. While the trust agreement itself (*Exhibit C*) and the medical service agreement (Exhibit B) are offered herewith as the best evidence of their provisions, the parties submit herewith for the Court's convenience, as Appendix I hereto, a copy of a summary description of the trust provisions and operation.

15. In entering into the contractual arrangements described in paragraphs 12 and 13 above, Health Plan and Medical Group were separate organizations independently contracting with one another at arms' length. For purposes of the present controversy, it is agreed that Health Plan and Medical Group remained independent contractors during all of the years in question, and that none of the participants in the retirement plan were employees of Health Plan.

16. The primary purpose of the retirement plan was to create an incentive for physicians to remain with Medical Group, or other groups of physicians contracting to serve Health Plan members, and thus to insure Health Plan that it would have a stable and reliable group of physicians providing medical services to its members with a minimum

of turn-over. The retirement plan was patterned after one previously established in Southern California between Health Plan and a partnership of physicians serving Health Plan members in its Southern California Region. The payments which Health Plan agreed to, and did make to the trust, were paid solely to fund the retirement plan, and were not otherwise available to Medical Group or to the individual members or employees thereof.

17. The trust embodying the retirement plan was established during the partnership's fiscal year ended June 30, 1960, upon the trustee receiving and accepting an initial payment from Health Plan. The trust utilized a cash method of accounting on a fiscal year ending June 30th. All payments made to the trust during the years in question (other than income earned on the trust corpus) were made directly by Health Plan and were made in accordance with the provisions of the medical service agreement (*Exhibit B*) and the trust agreement (*Exhibit C*) and not otherwise. No payments were made to the trust during the years in question by Medical Group or by individual participants in the retirement plan.

18. The participants in the retirement plan during the years in question comprised all partners of the Medical Group partnership plus a number of physicians employed by Medical Group who were not members of the partnership.

19. The following schedule sets forth, for each of the years in question (column (a)), the payments accrued and received by the trust from Health Plan (column (b)), the net earnings realized by the trust on its corpus (gross income earned on corpus adjusted for trust expenses) (column (c)), and the total increment in trust funds for each fiscal year:

(a) Fiscal Year Ended	(b) Payments of Health Plan to Trust	(c) Net Earnings on Trust Corpus	(d) Total Increment In Trust Funds Each Year
6/30/60	$ 516,298.68	$ 2,159.74	$ 518,458.42
6/30/61	573,924.60	3,355.79	577,280.39
6/30/62	606,866.28	30,290.56	637,156.84

6/30/63	*$ 315,660.60	$26,097.00	$ 341,757.69
4-Year Totals:	$2,012,750.16	$61,903.09	$2,074,653.25

20. Upon examination of the partnership returns of income filed by Medical Group for its fiscal years ended June 30, 1960 through 1963, defendant's District Director of Internal Revenue at San Francisco made an administrative determination that the partnership income stated therein should be increased by the sums of Health Plan's payments to the trust and trust earnings for the respective fiscal years in the amounts as set forth and explained in paragraph 19 above. The Director made a further administrative determination that such increased partnership income was taxable as income to the individual partners comprising Medical Group for each calendar year in which the partnership fiscal year ended. Thereafter, defendant's Commissioner of Internal Revenue affirmed and caused deficiencies to be assessed in the respective individual income taxes of each of the partners of Medical Group (including plaintiff-partners here), by allocating to each partner a portion of such increased partnership income. Attached hereto and submitted as *Exhibit D* in evidence is a two-page schedule setting forth (first page) how the Director determined and allocated increments in trust funds for each fiscal year in question, and (second page) how the determinations and allocations of increased income were applied in the case of each plaintiff-partner in these consolidated actions.

21. In making the determinations and allocations shown

* For the fiscal year ended June 30, 1963, the actual payment made by Health Plan to the trust was as shown in column (b) above ($315,660.60) and covered accruals for the first six months of that fiscal year. Thereafter, Health Plan made no further actual payments to the trust. Defendant's District Director determined that an additional payment of $324,688.08 was properly accruable from Health Plan to the trust for the second six months of the fiscal year ended June 30, 1963, and proceeded to make the determinations and allocations referred to in paragraph 20 below on the basis of total payments for said fiscal year (actual payments plus accrued payments) in the sum of $640,348.68. The parties in these actions are in disagreement over the question of accrued but unpaid payments to the trust by Health Plan for the fiscal year ended June 30, 1963, and hereby stipulate that such question not be included in the issue to be decided in these actions, and expressly reserve their respective rights, without prejudice to any party, to litigate or settle such issue after the resolution of the issue presented in these actions.

on *Exhibit D* the Director did not take into account the forfeitures by certain participants which occurred during the years here in issue. The participants who did forfeit plan units and the values thereof during said years are set forth in *Exhibit E* attached hereto.

22. The following schedule sets forth in column (d) the tax deficiencies determined and assessed in behalf of defendant in each case with respect to the increased income determined as described in paragraph 20 above and in *Exhibit D* attached hereto. These deficiencies were computed upon the sums shown in column (x) of *Exhibit D*. Plaintiffs paid the assessed deficiencies, together with the interest thereon shown in column (e), on the dates shown in column (f). Plaintiffs each claimed refunds of the total payments thus made (column (g)) and, after completion of the procedures described in paragraphs 7, 8 and 9 above,

(a) Civil No.	(b) Taxpayers	(c) Tax Year	(d) Tax Deficiency Paid	(e) Interest Paid on Tax Deficiency	(f) Date Paid	(g) Total Overpayments Claimed *
44352	Basye	1960	$1,424.02	$ 356.70	6-18-65	$1,780.72
		1961	1,586.93	302.30	6-18-65	1,889.23
						$3,669.95
44353	Cook	1961	$ 301.04	$ 57.35	6-18-65	$ 358.39
44354	Fiehler	1960	$ 660.87	$ 165.54	6-18-65	$ 826.41
		1961	869.67	165.66	6-18-65	1,035.33
						$1,861.74
44355	Grant					
	H.D. (Sep.)	1960	$ 919.76	$ 230.39	6-18-65	$1,150.15
	J.M. (Sep.)	1960	919.76	230.39	6-18-65	1,150.15
	(Joint)	1961	2,236.90	426.12	6-18-65	2,663.02
						$4,963.32
44356	Hunter	1960	$4,094.24	$1,025.57	6-18-65	$5,119.81
		1961	1,630.92	310.68	6-18-65	1,941.60
						$7,061.41
45575	Sobokowski	1960	$ 692.86		4-25-66	
				$ 208.99	5-24-66	$ 901.85
		1961	792.70		4-25-66	
				191.55	5-24-66	984.25
		1962	873.42		4-25-66	
				158.65	5-24-66	1,032.07
		1963	902.69		4-25-66	
				109.80	5-24-66	1,012.49
						$3,930.56

* Statutory interest on any refunds adjudged payable would be calculated on the sums shown in columns (d) and (e) from the dates shown in column (f).

filed these civil actions for refund challenging the defendant's administrative determinations.

23. In Dr. Nadia Sorokowski's case only (No. 45575), the following additional agreed facts are involved. Dr. Sorokowski terminated her membership in the Medical Group partnership in September of 1963. Upon her termination, provisions of the trust agreement became operative whereby she forfeited all rights to receive any future payments from the trust, and the total sum which had been credited to her tentative account in the trust was thereafter reallocated among the remaining participants in accordance with the trust's terms. On or about November 17, 1966, defendant's District Director on his own initiative made an administrative determination that Dr. Sorokowski was entitled to an ordinary loss deduction for 1963 in the amount of the total sum of the increases in income determined and allocated under the trust which had been the basis for the deficiency assessments made against her for the years 1960, 1961, 1962 and 1963. (*Exhibit D*, column (x).) The Director thereupon set up a loss deduction for 1963 in the amount of $6,797.32, and computed that an overpayment of the Sorokowskis' income taxes for 1963 had been made in the amount of $3,298.58. The Director also made an administrative determination that, by reason of Dr. Sorokowski's forfeiture, which occurred in September of 1963, the Medical Group partnership realized additional income for its fiscal year ended June 30, 1964, which then became taxable to the individual partners thereof. On or about March 8, 1967, defendant's Internal Revenue Service issued and mailed to the Sorokowskis a check in the amount of $3,875.31, representing a refund of the overpayment of taxes thus determined for 1963 plus interest thereon. Dr. Sorokowski responded by letter dated May 5, 1967, from her counsel, a copy of which is attached hereto as *Exhibit F*. Defendant filed, on or about May 3, 1967, a protective counterclaim against the plaintiffs-Sorokowski in this case, to which said plaintiffs duly responded, claiming a set-off of the amount thus refunded to plaintiffs in the event it is adjudged by the Court that plaintiffs are entitled to a refund on the common issue involved in these cases.

24. The parties agree that any recomputations of the various sums involved in these actions, which may be required by the Court's adjudication herein, will be made,

verified and settled by counsel. In the event that counsel cannot agree upon such recomputations, the sums may be settled by the Court upon application and ten (10) days notice.

III

AGREED STATEMENT OF LEGAL ISSUE

The parties agree that, upon the foregoing facts, the single issue for decision is:

Whether or not, as a matter of law, Health Plan's payments to the trust and the trust fund earnings constituted income to the partnership which is taxable to the plaintiff-partners for the respective years involved as determined by defendant.

Dated: March 27, 1968

STARK, SIMON & SPARROWE
By: /s/ JOHN F. WELLS
Attorneys for Plaintiffs

CECIL F. POOLE
United States Attorney
By: /s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant

THE PERMANENTE MEDICAL GROUP RETIREMENT PROGRAM FOR PHYSICIANS

Effective July 1, 1959

APPENDIX I

Retirement Program Definitions

Basic Monthly Compensation Rate

The basic monthly rate of compensation or drawing account payable to a Participant by Medical Group, excluding any contingent compensation or other compensation not regularly paid.

Beneficiary

The person or persons designated by a Participant in writing to receive benefits under the Program at his death prior to retirement or, if no valid designation is effective, his estate.

Committee

The Retirement Committee of seven members appointed to operate the Program and administer it according to its provisions; two members shall be designated by Health Plan, four (of whom at least three shall be Medical Doctors) by Medical Group, and one (a person not directly associated with Medical Group, and preferably one technically qualified by training and experience to advise the remaining members in a technical capacity) by the remaining members of the Committee.

Medical Subcommittee

The Medical Subcommittee of the Committee, consisting of three Medical Doctor members thereof, selected by the Committee.

Health Plan

Kaiser Foundation Health Plan, Inc., (Northern California Region).

Insurer

The life insurance company selected to underwrite the Program.

Medical Group

The Permanente Medical Group, a limited partnership, as may be changed from time to time by the addition of new personnel, by retirement, by reorganization, or otherwise.

Participant

An eligible physician who has elected to participate in the Program.

Trustee

The bank or trust company adopted under the terms of the Trust Agreement.

Facts You Will Want to Know About the Retirement Program

Are You Eligible?

You will be eligible to become a Participant on the July 1st which next follows your completion of two years of Continuous Full-time Association with Medical Group.

If your Continuous Full-time Association with Medical Group began on or before July 1, 1957, you were eligible on July 1, 1959 and may participate as of that date.

Must You Contribute?

No. The full cost of the Program will be met by Health Plan contributions.

How Much Will Health Plan Contribute?

The contributions made by Health Plan will be in accordance with the terms of its Medical Service Agreement with Medical Group. Until changed by the terms of the Medical Service Agreement, Health Plan's contributions will be at the monthly rate of twelve cents (12¢) per subscribing member.

Health Plan's obligation to make contributions in support of the Program is limited to the amounts required by Medical Service Agreements as may now or hereafter be in effect, and the Program does not obligate Health Plan to make any contributions except as specified therein.

What Disposition is Made of the Contributions?

All contributions will be deposited in the Trust. The Trustee is entitled to pay the cost and expenses of Trust administration, and such necessary expenses as the Committee may incur.

The Trust will pay Contributions over to the Insurer, to be held under the terms of a deposit administration contract.

When Will You Retire?

It is anticipated that you will retire at age 65, and the

unit allocation formula for allocating Health Plan's annual contributions to the tentative accounts of Participants is based on that assumption.

However, you may qualify for retirement benefits upon your retirement at any time after completing fifteen years of Continuous, Full-time Association with Medical Group, or at any time upon suffering disability of a substantially permanent nature which, in the opinion of the majority of a panel of three physicians chosen by the Committee, would make it impossible for you to continue a normal medical practice.

How Much Will You Receive When You Retire?

The amount of your retirement income will depend on the amount credited to your tentative account at the time of your retirement and the rate for converting your account into monthly retirement income based on your sex and age at retirement.

How Is Your Tentative Account Determined?

The contributions made by Health Plan are allocated each year among Participants according to a formula based on Basic Monthly Compensation Rates. Consideration is also given to length of prior service and age. The amount so allocated is credited to your tentative account.

At What Rate Will Your Tentative Account be Converted Into Retirement Income?

The rate of conversion will depend upon your sex, age at retirement, and the rates in effect. However, $1,000 will provide approximately $7.00 of monthly retirement income for life to a male age 65, or $6.00 of monthly retirement income for life to a female retiring at age 65.

How Does the Unit Allocation Formula Work?

The unit allocation formula is an attempt to provide equity among Participants so that each one will receive a retirement income at normal retirement proportional to both his Basic Monthly Compensation Rate and his length of Continuous Full-time Association with Medical Group.

The number of units credited to a Participant in a year equals $(A+(A\times B\times C))\times E$ wherein:

"A" represents your salary units—you are credited with one for each $10.00 of your Basic Monthly Compensation Rate.

"B" represents your past service—your years, if any, in excess of two, of Continuous Full-time Association with Medical Group prior to June 30, 1959.

"C" represents your past service unit factor—if you have past service under "B," this factor gives weight to your past service and depends on your age on June 30, 1959.

"E" represents your entry age factor—a factor which gives weight to the number of years you will be covered by the Program and which depends on your age at entry into the Program.

The total units for all Participants are added and divided into the dollar amount of Health Plan's contribution for the year. This gives the dollar value of a unit for that year. The multiplication of the units credited to a Participant by the dollar value of a unit for that year represents the dollar amount to be credited to his tentative account for that year.

At the end of this summary is a table of past service unit factors and entry age factors.

What Conditions Apply to Your Right to Continued Retirement Income Payments?

Your retirement income payments will be discontinued, and your Beneficiary's right to receive any payments at your death will be cancelled, under any of the following circumstances:

1. If, without the prior written consent of the Health Plan, you render professional medical services for any other hospital and medical service plan operated on a group practice prepayment basis within any county in California where Health Plan is operating; or
2. If, while physically fit and legally entitled to practice medicine, and while present within any Health Plan service area you fail or refuse to render consulting serv-

ices when reasonably requested to do so by any medical group practicing in such area and contracting with Health Plan to furnish medical services; or

3. If you fail to comply with such additional conditions as the Medical Subcommittee shall at any time prescribe.

In the event of discontinuance of your benefits under any of the conditions above recited you may, within six months after being so notified, request the Trustee, in writing, to have the facts of your case reviewed by the Committee, whose decision on any such review shall be final and conclusive.

What Happens if You Rejoin Medical Group After Disability Income Payments Commence?

If you are receiving retirement income payments solely on account of disability and subsequently rejoin Medical Group, you may choose between two alternatives:

1. Continue to receive your retirement income payments and be treated in all respects as a physician who has become associated with Medical Group for the first time, requalifying for participation on the July 1st after completing two years of affiliation with Medical Group after rejoining it; or
2. Subject to the Insurer's approval, elect to have your retirement income benefits discontinued and to have the single sum cash equivalent of your anticipated remaining payments restored to your tentative account to increase such benefits as might be subsequently credited thereto.

What Happens at Your Death Before Retirement Income Payments Commence?

In the event of your death before the commencement of retirement income payments the entire amount credited to your tentative account will be applied in such manner as you may during your lifetime have elected in a written election filed with the Committee, either:

1. To purchase an annuity or annuities, at then current rates, for your designated Beneficiary or Beneficiaries; or

2. Paid to your Beneficiary or Beneficiaries in a lump sum; or
3. Paid, with interest, to your Beneficiary or Beneficiaries in equal annual installments over such period not in excess of five years as you shall have designated; or
4. Paid or applied in such other manner as may be permitted under the Insurer's deposit administration contract.

What Optional Forms of Retirement Income Are There?

Prior to your retirement you may elect one of the following alternate forms of payment of retirement income which may be available under the deposit administration contract, subject to such conditions as the contract may stipulate:

1. Reduced payments for life with a guaranteed minimum period of years such as five, ten, fifteen or twenty
2. Reduced payment for life, with the provision that if your wife (or husband) is living on your death, payments will continue in the full amount or in a reduced amount for the remainder of her (his) life. (Of course, any such optional form of payment would necessarily be subject to discontinuance under the same conditions as would cause the discontinuance of payments in the normal form)

What Happens if You Leave Medical Group Before Becoming Entitled to Retirement Income Payments?

If, at the termination of your affiliation with Medical Group (except as the result of your death, or of your disability—See "When Will You Retire?") you have not either:

1. Completed fifteen years of Continuous, Full-time Association with Medical Group, regardless of your age; or
2. Reached your 65th birthday and completed ten but fewer than fifteen years of Continuous, Full-time Association with Medical Group

you will not then or thereafter be entitled to receive any benefits under the Program.

The value of your tentative account in such circumstances will become a forfeiture and will be added to Health Plan's contribution for the year in which your affiliation with

Medical Group is terminated, and allocated with that contribution on the next July 1st to the tentative accounts of physicians then actively participating under the Program.

What Happens if Medical Group is Reorganized or Dissolved, or the Trust Agreement is Terminated?

If Medical Group is reorganized or dissolved and at least 50% in number of its Participants within one year be or become associated with the reorganized Medical Group or with any other Medical Group contracting with Health Plan to provide medical services to Health Plan members, the Program will continue in operation for such Participants, subject to the terms of Health Plan's Medical Service Agreement with such Medical Group. The tentative account of any Participant not included among such 50% of Participants will be forfeited if he has not then qualified for retirement income benefits.

If, in connection with the reorganization or dissolution of Medical Group, Health Plan and Medical Group determine jointly that some other program will best serve to provide retirement benefits for the Participants, Health Plan and Medical Group may jointly instruct the Trustee to transfer the assets of the Trust to another trustee, insurance company or other organization to apply toward funding the benefits under such other program.

In the event of any reorganization, dissolution or other organizational change not described above, all assets held under the Trust Agreement on behalf of Medical Group will be converted to cash; and after reduction by proportionate shares of the expenses of liquidation, the balance of each Participant's tentative account will be paid to him in cash, in one sum.

What Else Should You Know About the Program?

Here are a few further facts worth knowing:

1. Continuous, Full-time Association with Medical Group means your association as an employee or partner devoting substantially full-time to providing medical and necessary administrative services in connection with Medical Group's medical practice, plus time covered by the following periods occurring after such association has begun:

Military service;
Medical research;
Advance study in the field of medicine;
Temporary disability; and
Any other period authorized by Medical Group and approved by the Committee

2. Benefits under the Program cannot be attached by creditors. Neither may you or your Beneficiary in any way transfer your interest in any benefits to any other person or organization.
3. The Committee expects to arrange with the Insurer to provide each Participant with an annual statement showing the dollar value of his tentative account following the close of each fiscal year.
4. You can name or change a Beneficiary by filing with the Committee an original or amended designation, in writing, on forms furnished for that purpose.

How Do You Become a Participant?

To enroll as a Participant, you need only to file in writing with the Committee an election to participate, on a form furnished for that purpose.

CONCLUSION

It is the objective of this summary to give you a description of the Program.

You will understand that this summary is merely descriptive in nature, and that the provisions of the Trust Agreement will be considered as controlling in any case involving a conflict between it and the content hereof.

Copies of the Trust Agreement are available for inspection by any Participant at the Executive Offices of The Permanente Medical Group.

Table of Applicable Factors

Age on June 30, 1959 (for determining "C" factors) and on your entry into the Plan (for determining "E" factors)	Past Service Unit Factors (C)	Entry Age Factors (E)
27	.04	1.000
28	.04	1.036
29	.04	1.073
30	.04	1.113
31	.05	1.154
32	.05	1.199
33	.05	1.245
34	.05	1.295
35	.05	1.348
36	.05	1.404
37	.05	1.465
38	.05	1.513
39	.05	1.566
40	.06	1.621
41	.06	1.680
42	.06	1.743
43	.06	1.812
44	.06	1.885
45	.07	1.966
46	.07	2.052
47	.07	2.148
48	.07	2.148
49	.08	2.148
50	.08	2.148
51	.09	2.148
52	.09	2.148
53	.10	2.148
54	.11	2.148
55	.12	2.148

Age on June 30, 1959 (for determining "C" factors) and on your entry into the Plan (for determining "E" factors)	Past Service Unit Factors (C)	Entry Age Factors (E)
56	.13	2.148
57	.14	2.148
58	.16	2.148
59	.18	2.148
60	.22	2.148
61	.27	2.148
62	.35	2.148
63	.52	2.148
64	1.03	2.148

ARTICLES OF PARTNERSHIP
THE PERMANENTE MEDICAL GROUP

Exhibit A

Copy #——, as amended to July 1, 1957

PERMANENTE MEDICAL GROUP
ARTICLES OF PARTNERSHIP (LIMITED)

WHEREAS, the undersigned desire to enter into a partnership for the practice of medicine;

NOW, THEREFORE, this agreement—

WITNESSETH:

Purpose

Article 1. The parties hereto enter into a partnership for the practice of medicine and for the purpose of affording better aid to the sick and afflicted, encouraging medical study and research and promoting better business administration in the practice of medicine.

Effective Date and Term

Article 2. This agreement shall be effective July 1, 1949, and the partnership shall continue thereafter until terminated, as hereinafter provided.

Principal Place of Business

Article 3. Unless and until hereafter changed, the principal office of the partnership will be at the Kaiser Foundation Hospital, Broadway and MacArthur Boulevard, Oakland, California, at offices leased from the Kaiser Foundation Hospitals. The partnership may also engage in the practice of medicine at Richmond, Vallejo, San Francisco and such other locations in the State of California as may be hereafter selected by the Executive Commitee.

Succession To Predecessor

Article 4. This agreement supercedes that certain agreement between Sidney R. Garfield, M.D., Cecil C. Cutting, M.D., J. Paul FitzGibbon, M.D., Morris F. Collen, M.D., J. Wallace Neighbor, M.D., Robert W. King, M.D., and A. LaMont Baritell, M.D., executed February 21, 1948, providing for the organization of a partnership

for the practice of medicine, and the partnership formed hereby succeeds to and assumes all of the existing business assets and liabilities of the former partnership.

Work of Partners:

Article 5. All of the general partners shall devote all or substantially all of their professional time, effort and abilities to the partnership except as hereinafter provided in this article; all billings and collections for professional services by any and all partners shall be made for the account of the partnership, and all earnings by any of the partners from the practice of medicine subsequent to June 30, 1949, shall belong to the partnership.

Work week, Vacations, Etc.

Unless otherwise provided by the Executive Committee, the regular work week of participation in partnership business for all partners shall not be less than eleven one-half days per week; as partners, vacations shall be two weeks per year during the first two fiscal years, three weeks per year during the third through the seventh fiscal years, and four weeks per year after seven fiscal years; and educational leave shall be one week per year. Absence for vacation, educational leave and sick leave shall be considered as regular participation in partnership business during the period of such absence.

Part Time Partners

It is the desire of the partnership to permit non-partnership research, teaching, business and other personal pursuits to a similar extent as exist in individual private practice, and the Executive Committee shall establish the policies and conditions by which this desire may be effectuated, provided, however, that a partner shall participate in partnership business for at least six one-half days per workweek. Subject to compliance with the conditions and policies established by the Executive Committee, any partner may be absent

from participation in partnership business for such pursuits, provided, however, that such partners shall not have the right to vote on any partnership matter which requires the vote of partners during such period of time as they are not regularly participating in partnership business to an extent of nine one-half days per work-week.

The policies and conditions established by the Executive Committee for these purposes shall have uniform application to all partners and may include the reduction of drawing account, other profit distribution, sick or disability leave, vacation, and capital investment, and the withholding of educational leave and any other partnership benefits and allowances not inconsistent with this agreement.

A partner may be permitted a leave of absence subject to the approval of and conditions established by the Executive Committee.

Capital: General Partners

Article 6. The general partners shall contribute as capital to the partnership the sums hereinafter specified, according to the classification of each respective partner:

Classification	Capital Account
Junior	$ 3,000
Senior	3,750
Division Chief	4,000
Chief of Service	5,250
Physician in Chief Co-Chief Assistant Chief Director	6,750
Executive Director Chief of Staff of Partnership	

Upon any reclassification of a partner, he shall adjust his capital contribution accordingly.

Capital: Limited Partners

Article 7. Each partner classified as a Director or Chief of Staff shall also become a limited partner and shall make an additional capital contribution as a limited partner in the sum of $1,750.

Loans by Partners

Article 8. In the event any partner, either general or limited, furnishes or advances further capital to the partnership, the same shall, unless otherwise agreed upon, be deemed a loan to the partnership.

Division of Profit:

Article 9. The net earnings that may accrue to the partnership during each fiscal year shall be divided as follows:

Limited Partners

a) Each fiscal year in which the net profits do not exceed the aggregate annual drawing accounts of all partners, each limited partner shall receive $600. If the net earnings of the partnership for such year exceed the aggregate annual drawing accounts of all partners plus the first $600 distributed to each limited partner, then each limited partner shall receive an additional $600.

General Partners

b) The balance of the net profits in each fiscal year, after deduction of the sums to be paid to the limited partners, shall be divided between the general partners in the following proportions:

Drawing Accounts

1) Each partner shall first receive an annual drawing account (payable monthly) in the range provided for his classification, the amount within such range to be determined as hereafter provided.

The annual range for each classification is as follows:

Chief of Staff or Directors	$19,890 and upward

Chief of Service, Co-Chief, or Assistant Chief	$12,000 and upward
Division Chief	$11,400 and upward
Seniors	$10,800 and upward
Juniors	$ 7,200 and upward

Said drawing accounts shall be paid in monthly installments and shall be paid only from the net earnings of the partnership. In the event the partnership earnings are insufficient to pay said drawing accounts, they shall be paid proportionately to the extent of the net earnings.

Distribution of Surplus

2) Annual net earnings of the partnership in excess of the aggregate drawing accounts of all partners (after provision for the amounts distributed to limited partners, and other financial obligations to which the partnership is committed until July 1, 1958, to terminate tenure points), shall be distributed equally among the partners.

Division of Losses

Article 10. Losses occurring in any one year up to an amount equal to the aggregate drawing accounts of the partners shall be borne in proportion to the respective drawing accounts of the partners; losses in excess thereof shall be borne equally.

Change in Fiscal Period

Article 11. In the event that the accounting period for the purpose of determining the distribution of net earnings or losses is less than a full year, the amount of annual drawing accounts shall be reduced by the same proportion as the accounting period bears to a full year.

No Compensation

Article 12. No partner shall receive any compensation for acting in partnership business, but his compensation shall be restricted to his distributive portion of the earnings of the partnership.

Bylaws and Powers

Article 13. The general partners may adopt by-laws providing for periodic meetings of the members of the partnership, for the election of officers to preside at such meetings, and for rules for the conduct of such meetings. Action by the partnership as a whole shall be by majority vote, each partner having an equal vote. The partnership as a whole shall determine general policy matters not inconsistent with this agreement. Decisions of the partnership on matters delegated herein to the Executive Committee shall become effective, however, only after approval of the Executive Committee, and nothing in this article shall be deemed to limit the powers of the Executive Committee delegated to them by this agreement.

Executive Committee:

Article 14. In order to carry out the business affairs, management and administration of the partnership, there shall be an Executive Committee consisting of (a) six permanent members and (b) three elected members.

Selection

The permanent members of the Executive Committee shall consist of the following: A. LaMont Baritell, M.D., Morris F. Collen, M.D., Cecil C. Cutting, M.D., M. Friedman, M.D., Robert W. King, M.D., and J. Wallace Neighbor, M.D.

In the event of the death, retirement, or withdrawal of any of the permanent members, the remaining members of the Executive Committee shall, by a three-fourths majority vote, nominate a successor from any of the members of the partnership. Said nomination shall be subject to approval by a majority vote of the partners. If the partners, by a majority vote, do not approve said nomination, the Executive Committee shall, within at least six months, nominate another member.

Elected Members

The three elected members of the Executive Committee shall each be selected from and represent one of the following three districts which are hereby formed for this purpose: District No. 1—Oakland region comprizing all offices of the partnership east of San Francisco Bay except those specified in District No. 3; District No. 2—San Francisco region comprizing all offices of the partnership west of San Francisco Bay; and District No. 3—Walnut Creek and Vallejo and their associated offices. Said elected members shall be elected in the following manner: A nominating committee shall be appointed by the Executive Committee to nominate two or more partners for election to the Executive Committee from each district for which an election is to be held; at the said election meeting any other nominations may be made by any partner, and the partnership shall elect by majority vote the Executive Committee member for each district for which an election is held. The elected members of the Executive Committee shall serve for a term of two years. In the event of the death, retirement, or withdrawal of an elected member, the successor for the unexpired portion of the term of said member shall also be chosen in the foregoing manner.

In the event of a vacancy or vacancies in the membership of the Executive Committee, the remaining members shall have all of the powers vested in the full Committee pending the appointment or election of additional members.

Powers

The Executive Committee shall have full and complete charge of the business affairs, administration and management of the partnership, including but without being limited to the following matters:

1. The making of all contracts, including

contracts with any person or organization for the rendition of professional services, hospitalization and incidental services.

2. The hiring and discharging of all employees of the partnership, except that the Executive Committee shall not make a contract for employment for more than two years without the consent of the majority of all partners.

3. The lease, purchase or other acquisition of property from others or the lease, sale or other disposal of partnership property, except that the Executive Committee shall not enter into a lease for a term of more than two years without the consent of the majority of all partners, nor shall it enter into any transaction for the purchase or sale of property in an amount in excess of $25,000. without the consent of the majority of all partners.

4. The Executive Committee shall also arrange for the purchase of supplies as required in the normal operation of the partnership.

5. The Executive Committee shall meet at least once every two weeks and shall adopt procedures for the conduct of its business.

6. The Executive Committee shall have the right to assign the duties of each partner in accordance with the classifications contained in this agreement. Such classification shall be made at least ten days before the beginning of each fiscal year of the partnership, and shall not be made more than once a year. Ten days before the beginning of each fiscal year, the Executive Committee shall also determine the amount of the drawing account of each partner within the range of his respective classification. In the event the Committee does not take action with respect to the classification or the amount of the drawing account of a partner, such partner shall

continue with the classification or drawing account previously held by him.

7. In the event of the dissolution of the partnership, the members of the Executive Committee holding such office as of the effective date of dissolution, shall have possession and control of all partnership assets for the purpose of winding up the partnership affairs, and shall for such purpose have all powers otherwise vested in the entire partnership.

Controller

Article 15. There shall be a controller of the partnership who shall be responsible for the establishment of proper accounting procedures and for the keeping of the books of the partnership, and who shall determine any questions of accounting that may arise.

The controller is also authorized and delegated the authority to open one or more bank accounts on behalf of the partnership, in the name of "The Permanente Medical Group" or such other name or title as he may designate, and he is authorized to draw, endorse, sign and deposit checks and drafts in the name of and on behalf of the partnership, and to use a facsimile signature therefor.

The Executive Committe shall have the right to remove the controller and appoint a successor, and to withdraw any delegation of authority herein made to the controller, and to designate such other persons to endorse, sign and deposit checks and drafts in the name of an on behalf of the partnership, and to open one or more bank accounts on behalf of said partnership, in such name or title as they shall designate.

Withdrawal, etc.

Article 16. In the event of the death, withdrawal or retirement of a general partner, or limited partner, this partnership shall not be thereby dissolved, but shall be continued by the survivors.

Determination of Interests

The interest of such partner in the partnership shall terminate as of the last day of the calendar month in which his death, withdrawal or retirement occurred, and the value of the interest of such partner in the partnership shall be determined by the Executive Commitee as of such date from the books of the partnership, and such interest as so determined shall be liquidated and the amount thereof shall be paid to such partner or his representatives, if deceased, provided that the partnership shall have the right, at its option, to pay such interest in twelve equal monthly installments, commencing from the time of the determination of the value of such interest. No audit shall be performed for this purpose prior to the close of any fiscal year.

The interest of such partner shall be conclusively determined by the book value of the partner's proportionate share of the capital of the partnership (which share shall be in the same proportion as the amount of capital contributed by him bears to the total amount of capital contributed by all partners), plus such partner's proportionate share of undistributed net earnings for the current year as of the end of the month in which he withdrew, retired or died, and said books shall be conclusive evidence thereof, and each partner, for himself, his heirs, representatives and assigns, agrees that such payment shall be accepted in full satisfaction of any and all claims that he or his heirs or estate may have against this partnership, and in full payment of all of the assets of every kind and description, and that all of his interests in such assets, except as above provided for, shall become the absolute property of the remaining partners upon his death. No value shall be assigned to good will or going value or similar intangibles.

Withdrawal and Retirement: Rights

Article 17. A partner may voluntarily retire or withdraw from the partnership at any time upon thirty days' notice in writing to the remaining partners, and any member may be required to withdraw at any time and for any reason whatsoever when, by at least two-thirds vote, the Executive Committee determines that such withdrawal be required. The retirement age from the partnership shall be sixty-five years, and voluntary retirement shall be permissible at any time between the sixtieth and sixty-fifth birthday, effective at the end of a partnership fiscal year. Compulsory retirement shall be at the beginning of the fiscal year next following the sixty-fifth birthday.

Sick or Disability Leave

Article 18. Every partner, upon admission to the partnership shall be entitled to five and one-half months' sick leave without loss of drawing account and participation in other distributions of partnership earnings. In each year of membership in the partnership subsequent to the first year of membership, a partner shall be entitled to an additional thirty days' sick leave, the unused portions of which may be accumulated from year to year with the unused portion of the original five and one-half months' sick leave period, provided, however, that at no time shall a partner be entitled to greater than five and one-half months' total sick leave. During any absence on sick leave, a partner shall not accrue further sick leave. During any absence for sickness in excess of the sick leave period, a partner shall not receive a drawing account or otherwise share in partnership earnings.

Upon any prolonged disability or illness, a partner who is entitled to sick leave, must elect in writing filed with the Executive Committee within thirty days from the onset of the disability or illness either:

1. To receive one hundred percent of his usual drawing account and participation in other distribution of earnings during such absence but for no longer than five and one-half months. Or

2. To receive one hundred percent of his usual drawing account and participation in other distribution of earnings for the first two months of such absence, fifty percent of such amounts for the next succeeding four months of such absence, and twenty-five percent of such amounts for the following six months of such absence.

After one year's continuous absence by reason of illness or disability a partner shall withdraw from the partnership, but may apply for readmission.

Additional Partners

Article 19. New general partners may be added to this partnership upon the approval of the majority of the Executive Committee and upon a vote of approval by three-fourths of all of the partners, and upon written acknowledgement of such new partner, to be bound by all of the terms and provisions of this agreement, and upon the payment by such new partner of the capital contribution herein provided for.

Termination

Article 20. This partnership may be terminated by a two-thirds vote of the Executive Committee.

Amendments

Article 21. The Articles of Partnership shall be amended by the adoption of any addition or amendment thereto by the written assent or vote at any regular or special meeting of the partnership subsequent to the meeting of the partnership at which said amendment or addition is first proposed, of a majority of all partners and by the vote or written assent of a majority of the Executive Committee at a meeting of the Executive Committee.

MEDICAL SERVICE AGREEMENT
July 1, 1959

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EXHIBIT B

MEDICAL SERVICE AGREEMENT

July 1, 1959—June 30, 1961

LETTER OF UNDERSTANDING

Executed July 15, 1959

AMENDMENT

Executed March 19, 1962
to amend Medical Service Agreement
for July 1, 1959—June 30, 1961,
as amended to cover July 1, 1961-June 30, 1962

MEDICAL SERVICE AGREEMENT

Northern California Region

July 1959—June 1961

KAISER FOUNDATION HEALTH PLAN, INC., a California nonprofit corporation, and THE PERMANENTE MEDICAL GROUP, a limited partnership, hereby agree as follows:

This Agreement consists of the following four parts:

Part I. Definitions and Introductory Provisions
Part II. General Contractual Provisions
Part III. Financial and Administrative Provisions
Part IV. Provisions Relating to Liaison and Cooperation

Part I.

DEFINITIONS AND INTRODUCTORY PROVISIONS

Article A

Definitions

As used in this Medical Service Agreement, the terms set forth in this Article shall have the meanings set forth herein except where from the context it is clear that such meanings are not intended.

Section A-1. Parties to or Affected by Agreement

a. "Medical Group" shall mean The Permanente Medical Group, a limited partnership, whose original Certificate of Partnership was filed with the County Clerk of Alameda County, California, June 29, 1949 in Book 5963 on Page 595.

b. "Physicians" shall mean all licensed physicians who are partners in, or associates or employees of, Medical Group.

c. "Other Personnel" shall mean all personnel other than Physicians engaged by Medical Group to assist in carrying out its responsibilities under this Agreement, including para medical personnel, nurses, and administrative, clerical, maintenance, and miscellaneous classifications.

d. "Attending Physician" shall mean the Physician pri-

marily responsible for the care of a Member with respect to the particular circumstance or condition requiring consideration or the authority or responsibility of an Attending Physician under this Agreement.

e. "Hospitals" shall mean Kaiser Foundation Hospitals, a California nonprofit and charitable corporation, insofar as its operations within the Service Area are concerned.

f. "Health Plan" shall mean the Northern California Region, a separate division of Kaiser Foundation Health Plan, Inc., a California nonprofit corporation.

Section A-2. Health Plan Members and Contracts

a. "Member" shall mean any person entitled to Medical Services pursuant to this Agreement by reason of a Health Plan Membership Contract.

b. "Subscriber" shall mean a Member by whom, or on whose direct behalf, membership dues are paid, and who is thereby entitled to Subscriber Benefits as specified in the applicable Membership Contract.

c. "Dependent" shall mean any Member bearing such relationship to a Subscriber as to be entitled to Dependent Benefits under the applicable Membership Contract.

d. "Membership Contract" shall mean the applicable Individual or Group Contract under which any Member is entitled to Medical Services to be provided by Medical Group pursuant to this Agreement.

e. "Group Contract" shall mean a master Membership Contract under which a number of Subscriber Members, together with their respective Dependent Members, are entitled to Medical Services to be provided by Medical Group pursuant to this Agreement.

f. "Individual Contract" shall mean a Membership Contract under which a single Subscriber Member or a single Subscriber Member and his Dependent Members are entitled to Medical Services to be provided by Medical Group pursuant to this Agreement.

Section A-3. Medical and Hospital Services

a. "Service Area" shall mean all that geographical area in Northern California lying within a radius of thirty (30) miles of any hospital owned or operated by Hospital or any medical offices under the professional supervision of Medical Group and utilized to provide Medical Services under this Agreement.

b. "Hospital Services" shall mean all hospitalization rendered to Members, including such nursing and incidental services as are customarily furnished by acute general hospitals and as are required by the Hospital Service Agreement entered into as of January 1, 1959 between Health Plan and Hospitals.

c. "Medical Services" shall mean all outpatient and inpatient services to Members (excluding Hospital Services) required fully to satisfy all obligations, within the Service Area, of Membership Contracts, or which may be rendered to Members within the Service Area by reason of their Health Plan membership, excluding, however, Private and Industrial Medical Services.

d. "Private and Industrial Medical Services" shall mean:

1. All services rendered by Medical Groups to persons who are not Members of Health Plan; and
2. All professional services for private and industrial patients including revenue derived from compensation insurance companies as a consequence of treating Health Plan Members suffering from an industrial illness or injury; and
3. Such other services rendered by Medical Group to Health Plan Members as may be excluded from the scope of Medical Services as defined in this Agreement by mutual agreement between Health Plan and Medical Group.

Section A-4. Financial and Accounting Matters

a. "Health Plan Revenue" shall mean all revenue actually received by Health Plan from or on behalf of Members pursuant to any provision of any Membership Contract, except as otherwise expressly provided by this Agreement Health Plan Revenue shall include Dues, Registration Fees, Supplemental Charges, and Drug and Miscellaneous Revenue as herein defined.

Health Plan Revenue shall also include the net effect of capital gains or losses resulting from the sale or other final disposition of fixed assets and leasehold improvements acquired by Health Plan for the principal purpose of providing services to Members.

Health Plan Revenue shall not include any sums received in the following categories:

1. Contributions to Capital, as herein defined;
2. Excluded Income, as herein defined;
3. Revenue attributable to Private and Industrial Medical Services, as herein defined, rendered by Medical Group;
4. Medical Review Fees for prospective Health Plan Members;
5. Charges made by Medical Group pursuant to Membership Contracts for house call services (i.e. house call professional fees and injections);
6. Such additional categories of income otherwise within the definition of Health Plan Revenue as may be excluded from time to time by mutual agreement of the parties.

b. "Dues" shall mean periodic payments made by or on behalf of Subscribers pursuant to Membership Contracts.

c. "Registration Fees" shall mean all Health Plan Revenue collected by Health Plan incident to registration of new members.

d. "Drug and Miscellaneous Revenue" shall mean the net effect of operations of Dapite, Incorporated in Northern California determined by consolidating said Dapite operating results with operating results of Health Plan.

e. "Supplemental Charges" shall mean all Health Plan Revenue other than Dues, Registration Fees, and Drug and Miscellaneous Revenue actually received from or on behalf of Members incident to rendition of Medical Services or Hospital Services. Supplemental Charges consist primarily of charges to Members in lieu of comprehensive prepaid Dues, and include:

Office visits, radiology, laboratory, physical therapy, dental X-ray, X-ray therapy, maternity, tonsillectomy, adenoidectomy, operating room, emergency room; and

Charges for transfusions, injections, allergy materials, allergy injections, hearing tests, radioactive isotope studies, hospital room and board, refractions; and

Assigned disability insurance benefits and net recov-

eries to Health Plan in third party responsibility cases; and

Other charges of similar nature now or hereafter made to Members in lieu of comprehensive prepayment.

f. "Contributions to Capital" shall mean any funds or other things of value received by Health Plan as donations, investments, consideration for initial issuance or renewal of Membership Contracts, or otherwise, which are intended and received for capital, rather than income, account. (Contributions to Capital do not constitute Health Plan Revenue).

g. "Excluded Income" shall mean all income received by Health Plan from investments (except for Health Plan's investment in Dapite, Incorporated) and from any other activities not directly or indirectly related to administering Membership Contracts or arranging for Medical and Hospital Services provided to Members. (Excluded Income does not constitute Health Plan Revenue).

h. "Net Health Plan Revenue" shall mean Health Plan Revenue minus all amounts paid or obligations incurred to Medical Group under Article H of this Agreement, all amounts paid or obligations incurred to Hospitals under the Hospital Service Agreement of Jan. 1, 1959, and all expenses paid or incurred by Health Plan incident to its operations in the Northern California Region, excluding, however, such expenses as may be allocable, under sound accounting practice, to the production of Excluded Income.

i. "Additional Compensation" shall mean amounts paid to Medical Group based on Health Plan Net Revenue as provided in Article I.

Section A-5. Facilities and Equipment

a. "Built-in Equipment" shall mean equipment which is an integral part of a building and is usually included in the construction contract.

b. "Movable Equipment" shall mean movable equipment having a unit cost of $50.00 or more, and a useful life of five years or more plus all tables, chairs, desks, files and cabinets regardless of unit cost.

c. "Non-capitalized Equipment" shall mean equipment (not included within the definition of Built-in Equipment or Movable Equipment) having a unit cost of less than

$50.000 and a useful life of less than five years and shall include expendable supplies and equipment.

Section A-6. Matters Relating to Claims

a. "Liability Claims" shall mean all claims asserted against Hospitals or Health Plan or Medical Group arising out of, or allegedly arising out of, acts or omissions occurring or alleged to have occurred after April 9, 1956, and during the term of this Agreement or any extension hereof.

b. "Contractual Claims" shall mean all claims arising, or alleged to have arisen out of the failure of Health Plan to perform its contractual obligations under Membership Contracts or out of the failure of Hospitals or Medical Group to perform their respective obligations under Membership Contracts during the term of this Agreement or any extension hereof.

c. "Mixed Claims" shall mean claims having aspects of both Liability Claims and Contractual Claims.

d. "Out-of-Area Claims" shall mean claims of Members for reimbursement of expenses incurred, or allegedly incurred, by them for Medical or Hospital Services pursuant to provisions of Membership Contracts covering monetary reimbursement for certain services received outside the Service Area.

ARTICLE B

Introductory Provisions

The principal facts and circumstances leading to the execution of this Agreement are as follows:

Section B-1. Nature and Functions of Health Plan

Health Plan is a California nonprofit corporation maintaining a nonprofit hospital and medical service program in California through contractual arrangements with physicians and hospitals; as of the date of this Agreement, approximately 350,000 Members are entitled to the benefits of Health Plan Membership Contracts in the Service Area.

Section B-2. Nature and Functions of Medical Group

Medical Group is a group of licensed physicians organized as a limited partnership for the purpose of carrying

out their practice of the medical profession. In addition to physician members of the partnership, Medical Group employs other physicians and Other Personnel. Medical Group is staffed and otherwise prepared to provide Medical Services to Members in the Service Area.

Section B-3. Mutual Desire to Contract Regarding Medical Services

Health Plan desires to arrange by contract for all Medical Services in the Service Area, required to satisfy, or convenient or incidental in connection with satisfying, the Medical Service obligations provided in Membership Contracts. Medical Group agrees to provide such Medical Services for the consideration and subject to the terms and conditions set forth in this Agreement.

Section B-4. Principles of Payment under Membership Contracts

Dues constitute the basic method of payment for Health Plan services under all Membership Contracts. The method of paying for Medical and Hospital Services through prepaid Dues is in keeping with Health Plan's fundamental principle that budgeting the costs of medical care is beneficial to Members, to Hospitals and Medical Group as providers of services and to the community as a whole.

Health Plan offers various types of Membership Contracts in order to provide for the varying circumstances of, and meet the needs of, different categories of Members. The various types of Membership Contracts differ in the extent to which the Medical Services and Hospital Services arranged by Health Plan are paid for through Dues and through Supplemental Charges; however, in all Membership Contracts, dues constitute the major portion of the payment. The concept underlying all such Contracts is that the Health Plan makes similar total charges for similar categories of benefits, which total charges are, however, divided in different ways between prepaid Dues and Supplemental Charges (which consists of various charges in lieu of prepaid Dues). Although Supplemental Charges in lieu of prepayment are made as an incident to and in connection with the receipt by Members of various Medical Services and Hospital Services, the rendition of such Services by Hospitals and Medical Group is done pursuant to

the requirements of this Agreement and of the Hospital Service Agreement of January 1, 1959 and not in consideration of such Supplemental Charges. Accordingly, such Supplemental Charges do not constitute fees for services, but rather are charges in lieu of prepayment in accordance with the Health Plan's basic principles.

To facilitate applying these underlying principles, it is desirable that all categories of Health Plan Revenue shall be collected by, or for the account of Health Plan, and that Compensation for Medical Services shall be on the same basis for all types of Membership Contracts without being affected by the varying relationships between Prepaid Dues and Supplemental Charges.

Section B-5. Improved Basis of Contracting

Health Plan has heretofore contracted with Medical Group for Medical Services to Health Plan Members on terms similar to those embodied in this Agreement. This Agreement represents the joint efforts of Health Plan and Medical Group to simplify contractual arrangements, stabilize Medical Group revenue, and achieve a more efficient and practical allocation of functions and responsibilities to increase benefits to Members and decrease costs as much as possible consistent with maintaining desirable standards of Hospital Services and of professional Medical Services.

Section B-6. Independence of Contracting Parties

A fundamental feature of Health Plan's nonprofit hospital and medical service program is that the Health Plan and the Medical Group are separate and independent entities. The relations of Health Plan and the Medical Group are purely contractual, and neither Health Plan, nor any employee thereof is the agent, employee, servant or other representative of Medical Group, nor is Medical Group or any Physician or Other Personnel in Medical Group an agent, employee, servant or other representative of Health Plan.

Section B-7. Liaison and Cooperation

As independent contracting parties, Health Plan and Medical Group maintain separate and independent management, and each has full and complete authority and

responsibility regarding its organization and operations. However, the nature of Health Plan's nonprofit hospital and medical service program is such that efficient operation, in the interest of providing comprehensive benefits to Members at the most reasonable cost consistent with desirable standards of Medical Services and Hospital Services, requires continuing and effective liaison and close cooperation between Health Plan and Medical Group. Health Plan and Medical Group mutually intend that, to the fullest extent consistent with separate and independent management, such liaison and cooperation shall be maintained.

Section B-8. Intent to Establish Exclusive and Continuing Relationship

Health Plan and Medical Group believe their best interests and the best interests of Members will be promoted by establishing a stable and continuing relationship in accordance with the principles established by this Agreement, and each party intends to attempt in good faith to continue contractual arrangements upon the expiration of this Agreement generally in accordance with such principles. Health Plan intends to contract for Medical Services exclusively with Medical Group and not to contract for such services with any other physicians in the general area now being served by Medical Group so long as Medical Group shall satisfactorily serve the needs of Health Plan and Health Plan Members. Similarly, Medical Group intends to contract exclusively with Health Plan and not to render professional services pursuant to any other direct service type of prepayment plan within the general area being served by Health Plan so long as its relationship with Health Plan shall satisfactorily serve the needs of Medical Group.

Part II.

GENERAL CONTRACTUAL PROVISIONS

Article C

Arrangements Regarding Medical Services

Section C-1. Medical Services to be Provided

Within the Service Area, Medical Group shall provide to all Members all Medical Services required by or incident

to Membership Contracts. All Medical Services required or provided hereunder shall be of good quality and shall meet the accepted standards of professional medical and surgical practices prevailing in the Service Area at the time such services are rendered.

Medical Group shall be solely responsible for the rendition of all Medical Services pursuant thereto, without intervention in any manner by the Health Plan or its agents or employees. However, Medical Group undertakes that such Medical Services shall be available at such times and places as are necessary and practical for the prompt and proper rendition thereof.

Section C-2. Continuing Responsibility

Membership Contracts in effect in the Service Area provide certain continuing responsibility in the event Health Plan terminates a Membership Contract. A typical provision is as follows:

> "If this Agreement is terminated as to a Subscriber or Family Dependent by the Health Plan, said Subscriber or Family Dependent shall be entitled to continuation of the services set forth in this Agreement for any condition being treated under this Agreement at the effective date of termination, for a period not to exceed one hundred and eighty (180) consecutive days from the date of termination, provided such Subscriber or Family Dependent notifies the Health Plan in writing within thirty (30) days from the effective date of termination that he desires continuation of services for said condition, such notice to set forth the nature of the condition and the name of the attending physician. Upon receipt of such notice, the Health Plan, after consultation with the attending physician, shall provide the Subscriber or Family Dependent with a written statement confirming and defining, or denying, his rights to services during said one hundred and eighty (180) day period."

In addition to other Medical Services to be provided by Medical Group under this Agreement, Medical Group shall provide, within the Service Area, all Medical Services required by, or incident to continuing responsibility provisions in Membership Contracts.

Section C-3. Compensation for Medical Services

As full consideration for rendering Medical Services as required by Sections C-1 and C-2, Medical Group shall receive the compensation provided in Part III hereof; Medical Group shall not make or permit any charge to Members on account of or otherwise incident to Medical Services, except as specifically provided or permitted by applicable Membership Contracts. This Section shall not operate in any manner to restrict Medical Group with respect to charges for Private and Industrial Medical Services.

Section C-4. Limitations on Subcontracting

Medical Group shall not assign or subcontract any part of the performance of Medical Services pursuant to this Agreement to other physicians without the approval of Health Plan; provided, however, that Medical Group may engage services of such consultants and specialists as appropriate in maintaining accepted professional standards of medical care; provided further, that Medical Group may engage the assistance of licensed medical doctors not regularly employed by or otherwise associated with Medical Group for emergency duty, night duty and house calls, in accordance with usual and customary practices in the medical profession in the Service Area, provided that the quality of Medical Services is not adversely affected thereby.

Section C-5. Review of Membership Contracts

a. *Existing Contracts.* Medical Group has reviewed all Membership Contracts in effect as of the effective date of this Agreement, and hereby acknowledges its approval thereof.

b. *Amendments and Modifications.* If Health Plan shall desire to modify or amend existing Membership Contracts, then Health Plan shall submit such proposed amendments or modifications to Medical Group for review a reasonable time in advance of the proposed effective dates thereof. If Medical Group does not approve of any such amendment or modification because it (i) requires or tends to require additional Medical Services within the Service Area, (ii) appears, in the reasonable judgment of Medical Group, to

affect the physician-patient relationship or professional or ethical aspects of Medical Group's practice, or (iii) otherwise tends, in the reasonable judgment of Medical Group, to affect adversely the interests of Medical Group, then Medical Group shall so notify Health Plan in writing within thirty (30) days after receipt of such proposed amendment or modification; no amendment or modification of existing Membership Contracts which Medical Group has disapproved as above provided shall be binding on Medical Group.

If Medical Group shall desire to modify or amend existing Membership Contracts, it may submit its proposed amendments or modifications to Health Plan for review and discussion. Health Plan shall endeavor to cooperate with Medical Group in effecting amendments or modifications proposed by Medical Group. However, no such amendment or modification shall take effect until approval thereof by Health Plan and compliance with all necessary procedures and formalities required or deemed desirable by Health Plan in maintaining proper relationships with the Members affected thereby.

c. *Renewal or Extension of Existing Contracts.* Health Plan may, without prior review or approval of Medical Group, renew or extend existing contracts unless Medical Group shall, at least sixty (60) days prior to the time at which Health Plan is required to give notice of amendment, modification or termination, notify Health Plan that Medical Group desires that such contracts be amended, modified or terminated. If Medical Group so notifies Health Plan, Health Plan will cooperate with Medical Group in an effort to arrive at a mutually satisfactory disposition of Medical Group's request. However, nothing contained in this subsection C-5-c shall prevent Health Plan from renewing or extending existing contracts without amendment or modification if Health Plan deems such action necessary or desirable.

d. *Changes in Dues or Supplemental Charges.* The handling of changes in rates charged to Health Plan Members, either through prepaid Dues or Supplemental Charges, is governed by Section L-5, and changes affecting only the amount of prepaid Dues or Supplemental Charges shall not be deemed to constitute amendments or modifications within the meaning of this Section C-5.

Section C-6. Review of Additions to Membership

Health Plan and Medical Group mutually desire that, so long as Medical Group is providing Medical Services to all persons entitled to the benefits of Health Plan coverage within the Service Area, total enrollment shall be controlled to avoid exceeding the reasonable capacity of available personnel and facilities. However, growth of Health Plan membership is not entirely within the control of Health Plan. To the end that membership growth may be limited insofar as practical consistent with existing commitments:

a. *Additions to Existing Groups.* Under many Health Plan Group Contracts additional persons in the group covered by such contracts are entitled to Health Plan membership without review or approval, either by Health Plan or Medical Group; Medical Group is responsible under this Agreement to provide Medical Services to additional persons entitled to enroll under such Group Contracts. Health Plan will, however, use its best efforts, insofar as consistent with its commitments, to limit additional enrollment under existing Group Contracts in those situations in which such additional enrollment would tend to cause an excessive burden on available facilities or would tend to affect adversely the standard of professional care being rendered.

b. *Transfers from Group to Individual Membership.* Under many Health Plan Group Contracts, Members whose affiliation with the group is for any reason terminated are entitled to continue their membership under an Individual Contract; similarly, under many Individual and Group Contracts, Dependants, upon attaining a certain age, are entitled to continue their membership under their own Individual Contracts. In all such cases, Medical Group is responsible, under this Agreement, to provide Medical Services to existing Members who exercise their contractual rights to continue their memberships.

c. *New Individual Enrollments.* Additional persons desiring to enroll under Individual Contracts shall be subject to medical review by Medical Group, and Health Plan will not enroll any persons as Members who fail to qualify for membership under such medical review; nor will Health Plan effect any additional enrollments under circumstances in which, in Medical Group's opinion, such additional enrollments are apt to cause an excessive burden on available facilities or on Medical Group.

d. *New Group Enrollments.* If Health Plan desires to enroll one or more additional groups under a Group Contract of any type now in effect, or any amendment or modification thereof, Health Plan shall advise Medical Group regarding the terms of the proposed contract and of the estimated number of new Members to be enrolled. If Medical Group does not approve of such proposed new enrollment, either by reason of number of prospective new Members or by reason of the terms of the proposed contract, Medical Group shall so advise Health Plan in writing within thirty (30) days after receipt of notice; Medical Group shall have no obligation under this Agreement to provide Medical Services to new Members enrolled by Health Plan if Medical Group so advises Health Plan of its disapproval.

Section C-7. Limitations on Disapproval.

Medical Group shall use its best efforts to accommodate contract changes, if any, proposed by Health Plan pursuant to Section C-5-b and to provide Medical Services, as required, to permit normal growth and enrollment of additional Members pursuant to Section C-6; and Medical Group shall not unreasonably withhold its approval of contract changes or the enrollment of new Members under Individual or Group Contracts.

Section C-8. Personnel and Equipment to be Provided by Medical Group.

Within the Service Area, Medical Group shall provide, at Medical Group's expense, all Physicians and Other Personnel and all Non-Capitalized Equipment reasonably required for full and satisfactory performance of all Medical Services (except that Health Plan shall provide such Non-Capitalized equipment as the parties hereto shall mutually agree upon) and shall bear all expenses, required or incurred in connection with conducting Medical Group's practice, including expenses incident to providing Physicians, Other Personnel, facilities, equipment, and medical and administrative services, except to the extent that Health Plan, under this Agreement, expressly undertakes to provide facilities, equipment or services or incur expenses. Medical Group shall provide all personnel and facilities and bear all expenses relating to Private and

Industrial Medical Services, except to the extent that facilities or services incident to Private and Industrial Medical Services are to be provided by Health Plan under this Agreement.

Under the Hospital Service Agreement entered into as of January 1, 1959 between Health Plan and Hospitals, Hospitals is required to provide all Hospital Services, together with facilities, personnel and equipment reasonably required for the full and satisfactory performance thereof, and it is understood that this Section C-8 does not require Medical Group to provide hospital personnel, facilities or equipment.

Article D

Relations Between Physicians and Members

Section D-1. Physician-Patient Relationship.

Physicians shall maintain the relationship of physician and patient with Members, without intervention in any manner by Health Plan or its agents or employees, and Physicians shall be solely responsible for all medical advice to, and treatment of Members and for the performance of all Medical Services, within the Service Area in accordance with accepted professional standards and practices.

Section D-2. Termination of Untenable Relationships.

Health Plan and Medical Group recognize that the physician-patient relationship is a personal relationship and involves a professional responsibility, and that circumstances may arise under which relations between particular Members and particular physicians may become unsatisfactory. In such cases Medical Group will use its best efforts to provide Physicians who may develop a satisfactory physician-patient relationship with such Members; if Medical Group is unable to do so, then Health Plan, upon written request from Medical Group will use its best efforts to terminate the membership of any such Member as promptly as reasonably possible.

Article E

Relation of Health Plan with Members and the Public

Health Plan recognizes that legal provisions and pro-

fessional ethical standards relating to the practice of medicine prohibit advertising or solicitation by physicians, and that Physicians wish to conduct their practice in an entirely lawful manner and avoid any actions which might appear inconsistent with professional standards of medical ethics; it is understood, in this connection, that Health Plan is an independent contractor and that neither Health Plan nor any of its employees or agents is an employee, agent or representative of Medical Group or any Physician. However, in order to avoid embarassment to Medical Group and Physicians which might arise if Health Plan were to exercise its legal rights to advertise and to solicit, and to define the areas in which Health Plan may act freely on its own behalf consistent with Health Plan's desire to avoid actions which might be embarassing to Physicians or Medical Group, it is agreed that:

Section E-1. Health Plan Shall Not Advertise or Solicit Medical Practice

Health Plan shall not advertise the medical practice of Physicians or Medical Group, nor shall Health plan solicit patients on behalf of Physicians or Medical Group.

Section E-2. Providing Information to Members

Health Plan may properly take the initiative in informing Members regarding Health Plan and regarding services and facilities available to Members under their Membership Contracts, with due consideration to professional ethical standards.

Section E-3. Providing Information to Non-Members

Health Plan may provide information regarding Health Plan and Health Plan membership to such individuals or groups, including public or semi-public organizations such as legislative or other governmental committees, as may take the initiative in requesting such information, with due consideration to professional ethical standards.

Section E-4. Statistical Surveys, Etc.

Health Plan may make surveys and take such other actions and conduct such other inquiries as may be necessary to develop statistical information regarding economic

demand for Health Plan coverage in various areas, desires and attitudes of Members regarding services arranged by Health Plan, reasons for termination of memberships, and other matters of information relevant to the proper operation of Health Plan. No publication or distribution of the results of such surveys, except as required for internal uses and purposes of Health Plan, shall be made without prior consultation with Medical Group, and no such distribution or publication shall be effected except with due consideration to professional ethical standards.

Article F

Providing and Maintaining Records

Section F-1. Records of Health Plan Membership

Health Plan shall maintain such records and establish and adhere to such procedures as may be reasonably required to determine the number of Members entitled to Medical Services under this Agreement and to permit Medical Group conveniently to identify Members, and shall furnish such information to Medical Group. Medical Group shall cooperate with Health Plan in connection with such records and procedures in order that necessary determinations regarding eligibility for Medical Services and the amount of compensation payable to Medical Group under this Agreement may be accomplished with maximum efficiency and minimum administrative cost.

Section F-2. Patients' Records in General

Medical Group shall maintain, for each patient receiving Medical Services pursuant to this Agreement, a medical record in such form and detail as is customary among medical doctors maintaining accepted professional standards of medical practice in the Service Area. Health Plan shall make arrangements with Hospitals for maintaining hospital medical records in such form and detail as is customary in the Service Area, and Medical Group shall cooperate with Hospitals in maintaining such records.

Section F-3. Financial and Accounting Records

Health Plan and Medical Group shall maintain complete

financial and accounting records in accordance with good accounting practice sufficient for prompt and proper determination of Health Plan Revenue, Net Health Plan Revenue, and all other matters of a financial or accounting nature required for the proper administration of this Agreement.

Section F-4. Statistical Record

Medical Group and Health Plan shall cooperate in keeping statistical records relating to Medical Services, Hospital Services, Health Plan utilization and other matters required for the proper administration of Health Plan's medical and hospital service program.

ARTICLE G

Termination and Miscellaneous Provisions

Section G-1. Term of Agreement

This Agreement is effective as of July 1, 1959 and shall continue in effect to and including June 30, 1961, except as expressly provided in this Article and in Section C-2, neither party shall have any contractual obligation thereafter by reason of this Agreement. However, the parties expect that they will by mutual agreement continue their contractual relationship.

Section G-2. Termination or Extension of Agreement

Either party may give written notice to the other party at least ninety (90) days prior to June 30, 1961 of such party's desire either to terminate this Agreement or to renegotiate particular provisions hereof. Unless notice is given in such manner, this Agreement shall continue in effect from year to year thereafter, subject, however, to termination or renegotiation at the end of any year on ninety (90) days' written notice from either party to the other.

Section G-3. Continuing Responsibility in Case of Termination

Certain Membership Contracts run for fixed periods and may be terminated only at the end of such periods by a

written notice given a specific time in advance thereof. As a result, in the event that this Agreement is terminated at any time and not succeeded by a medical service agreement between the same parties providing for Medical Services to all Members being served by Medical Group at such date of termination, it is likely that there will be many Members having continuing rights to the benefits of Membership Contracts.

In addition, many Membership Contracts provide certain continuing responsibility in the event Health Plan terminates such contracts. A provision typical of such continuing responsibility provisions is set forth in Section C-2.

The intent of this Medical Service Agreement is that Medical Group shall be obligated to furnish all Medical Services required by Membership Contracts, including such as may be required either under continuing responsibility provisions typified by the provisions set forth in Section C-2, or because the Health Plan is not contractually entitled to terminate a Membership Contract contemporaneously with the termination of this Agreement, or because of a combination of both such circumstances.

Accordingly, it is agreed that in the event this Agreement should be terminated and not succeeded by a medical service agreement between the same parties providing for Medical Services to all Members being served by the Medical Group at the date of termination, then Medical Group shall, if, and to the extent so requested by Health Plan, continue to render Medical Services as required fully to satisfy all Medical Service obligations of Membership Contracts not terminated contemporaneously with the termination of this Agreement and all Medical Service obligations incident to continuing responsibility provisions of Membership Contracts terminated either previous to, contemporaneously with, or subsequent to, the termination of this Agreement.

Health Plan shall continue to collect all Health Plan Revenue which it is entitled to collect under the provisions of applicable Membership Contracts on account of Members continuing to receive or entitled to continue receiving Medical Services which Medical Group is obligated to furnish under Section G-3 after the termination of this Agreement, and Medical Group shall receive compensation as provided in Section H-1 with respect to all such Members.

All other compensation and other provisions of this Agreement shall continue in effect insofar as applicable with respect to all Members receiving or entitled to receive Medical Services pursuant to this Section G-3 after the termination of this Agreement.

In the event that it shall at any time appear probable that this Agreement will be terminated and not succeeded by a medical service agreement between the same parties providing for Medical Services to all Members being served by the Medical Group at the anticipated date of termination, then Medical Group and Health Plan shall cooperate in limiting Medical Group's continuing responsibilities under this Section G-3 insofar as practical under the circumstances.

Section G-4. Effect of Changes in Partnership

The parties intend that this Agreement shall continue in effect, regardless of the withdrawal from Medical Group of individual partners or the addition of new partners or other changes in the organization of Medical Group so long as most Physicians who are partners in Medical Group continue their association with Medical Group as now organized, or as it may be reorganized through the voluntary action of partners therein.

Section G-5. Rights of Third Parties

This Agreement is made for the benefit of Members entitled to receive Medical Services hereunder. However, Health Plan and Medical Group reserve the right to amend this Agreement by mutual agreement or to terminate it in any manner herein provided, without notice to, or consent of, any Member; and nothing herein contained shall operate in any manner whatsoever to increase the rights of any Member or the duties or responsibilities of Health Plan or Medical Group over such rights, duties and responsibilities as may exist in the absence of this Agreement.

Section G-6. Principles of Medical Ethics

Health Plan and Medical Group desire that all medical practice pursuant to this Agreement shall be conducted in accordance with ethical principles as reflected in the "Principles of Medical Ethics of the American Medical Associa-

tion" published in June of 1957. If in the course of administration of this Agreement any questions arise relating to the physician-patient relationship or other matters involving problems falling within the scope of medical ethics, applicable principles of medical ethics may be referred to as a guide in the interpretation of this Agreement.

In the event that action may be initiated by any professional medical association or society predicated on allegations that one or more provisions of this Agreement are unethical, or if the Medical Group experiences serious difficulty in engaging physicians by reason of widely held objections, on ethical grounds, to any provisions of this Agreement, then Health Plan shall use its best efforts to work out with Medical Group mutually satisfactory substitutes therefor sufficient to remove or overcome such professional ethical objections.

Section G-7. Adjustment for Gross Inequities.

The parties to this Agreement recognize the considerations involved in determining the present per Member price specified in Article H, other compensation arrangements, assignment of functions and responsibilities, and other matters covered by this Agreement are complex. Thus, during the term of this Agreement it may develop that, through inadvertence or mistake, or erroneous assumptions, on the part of either party, this Agreement embodies compensation arrangements or other provisions which do not work out in practice as anticipated, or which are grossly inequitable to either party. In such event, Health Plan and Medical Group will endeavor in good faith to work out mutually satisfactory arrangements consistent with their underlying intention that the nonprofit hospital and medical service program maintained by Health Plan shall be conducted, and contractual arrangements between Health Plan and Medical Group shall be established and adjusted to provide:

1. Compensation to Medical Group sufficient to enable Medical Group to provide medical care of good quality in accordance with accepted medical and surgical practices prevailing in the Service Area and compatible with Medical Group's principles.

2. Comprehensive benefits to Members at the most rea-

sonable cost consistent with desirable standards of Medical Services and Hospital Services; and

3. Sufficient revenue to Health Plan to meet all Health Plan operating requirements and to provide for improving and expanding facilities and services in the interest of present and prospective Members.

Part III

FINANCIAL AND ADMINISTRATIVE PROVISIONS

Article H

Base Compensation to Medical Group

As base compensation to Medical Group for Medical Services to be provided by Medical Group hereunder, Health Plan shall pay to Medical Group the amounts specified in this Article H.

Section H-1. Per Member Price

Health Plan shall determine the average number of Members, whether paying, nonpaying, exercising continued coverage rights following termination, or otherwise, entitled to Medical Services to be provided by Medical Group within the Service Area for each month during the term of this Agreement, and shall pay to Medical Group an amount equal to such average membership multiplied by the per Member price in effect for the month. Payments equal to approximately 25% of the estimated amount due for the month will be made on the 7th, 14th, 21st and 28th of each month, with a final payment being made no later than the 20th of the following month. The initial per Member price for July 1959 and each succeeding month, until adjusted pursuant to this Agreement, is the sum of $2.61329 per Member per month.

As of the effective date of this Agreement, determination of the number of Members entitled to Medical Service hereunder is being made monthly. It is understood that existing procedures with regard to determining the number of Members, as well as providing identification to Members,

shall not be changed without consultation between Health Plan and Medical Group.

Section H-2. Adjustments to Per Member Price

The initial per Member price provided under Section H-1 shall be subject to adjustment during the term of this Agreement, as follows:

a. *Escalation for Union-Negotiated Increases.* As of the effective date of any union-negotiated increases in direct wages and salaries and fringe benefits, taking effect after June 30, 1959, affecting personnel employed by Medical Group, the per Member price shall be adjusted so as to provide Medical Group with additional revenue to adjust for such union-negotiated compensation increases.

In computing such adjustment, the provision for compensation to unionized employees of Medical Group included in the initial per Member price established by Section H-1 shall be utilized, and the percentage increase negotiated between union and Medical Group shall be applied to such provision.

b. *Escalation for General Economic Increases to Non-unionized Personnel Other than Physicians.* If, as a consequence of a union-negotiated compensation increase, or otherwise, Medical Group extends a general economic compensation increase or fringe benefits to non-unionized employees other than Physicians, and such increase is approved by Health Plan, the per Member payment shall be adjusted, as of the effective date of such general increase, so as to provide Medical Group with additional revenue to adjust for such increase.

In computing such adjustment, the provision for compensation to non-unionized employees other than Physicians included in the initial per Member price established by Section H-1 shall be utilized, and the percentage increase approved by Health Plan shall be applied to such provision.

Section H-3. Provision for Additional Adjustments.

The initial per Member price specified in Section H-1 as adjusted pursuant to Section H-2 shall continue in effect through June 30, 1960. Effective July 1, 1960, additional adjustments shall be made as follows:

a. *Adjustment for Supply Cost Increases.* Effective July 1, 1960, the per Member per month price in effect under

this Agreement for June 1960 will be further adjusted by an amount equal to the increase in the cost of supplies provided by Medical Group in rendering service under this Agreement as reflected in the latest available projection of supply costs by the Financial Planning Department of Permanente Services, Inc. which adjustment is now estimated to equal approximately $.01700 per Member per month.

b. *General Adjustment for Physicians.* In addition, Health Plan and Medical Group have negotiated an increase in the per Member per month price of $.08940 to take effect July 1, 1960.

Section H-4. Provision for Savings and Retirement Program for Physicians.

In the event that Medical Group establishes a savings and retirement plan or other deferred compensation plan approved by Health Plan, Health Plan will pay, in addition to all other sums payable by Health Plan under this Agreement, the contributions required under such plan to the extent that such contributions exceed amounts, if any, contributed by Physicians; provided, however, that Health Plan shall commence contributions July 1, 1959, and provided further that Health Plan's obligation to make such contributions shall continue only so long as this Agreement or any continuation or extension generally similar to this Agreement shall remain in effect. (The per Member price established by Section H-1 as adjusted pursuant to Section H-2 includes a provision to cover Medical Group's cost on account of Other Personnel under the Kaiser Permanente Retirement Plan which was made effective July 1, 1959.)

Article I

Additional Compensation to Medical Group

In addition to base compensation for Medical Services, as provided in Article H, Health Plan shall pay to Medical Group fifty (50) percent of Net Health Plan Revenue, if any. Such additional compensation shall be determined and paid as provided in this Article I.

Section I-1. Determination of Net Revenue

From Health Plan Revenue, determined in accordance

with sound accounting practice, Health Plan shall pay, reserve for, or otherwise provide for the following:

a. All Health Plan operating costs and expenses, including all amounts required on account of

(i) Insurance and Claims;
(ii) All expenses incurred in connection with adjusting or defending Claims;
(iii) All expenses incurred in connection with programs to reduce losses on account of Claims;
(iv) Out-of-Area Claims;

except such expenses, if any, as may be properly allocable under sound accounting practice to the collection of revenue other than Health Plan Revenue as herein defined;

b. All obligations to Medical Group under Article H;

c. All obligations to Hospitals under Article of the Hospital Service Agreement of January 1, 1959 between Health Plan and Hospitals.

The balance of Health Plan Revenue remaining after all of the foregoing have been paid, reserved, or otherwise provided for, shall, for all purposes of this Agreement, constitute Net Health Plan Revenue.

Section I-2. Retained Net Earnings

From Net Health Plan Revenue developed during any fiscal period used as a basis for determining Net Revenue, Health Plan shall retain net taxable income of One Hundred Dollars (100.00) per month for the period.

Section I-3. Payment of Net Revenue

Health Plan shall estimate its Net Revenue on a quarterly basis, and shall pay to Medical Group its share of Net Revenue for each quarter, as so estimated, within twenty (20) days after the close of the next succeeding calendar quarter, always reserving Net Revenue for one calendar quarter as security against overpayments resulting from adverse changes in operating results within the fiscal period, from audit adjustments and other causes; such payments shall be tentative only and subject to Health Plan's right of recapture by payment or offset in the event audited operating results for the fiscal period reveal that tentative payments based on estimates of Net Revenue were excessive.

Section I-4. Distribution of Additional Compensation Based on Net Revenue

Subject to the provisions of Section I-3, Additional Compensation based on Net Revenue will be paid to Medical Group, free of restriction, for distribution among partners and employees of Medical Group in such manner as Medical Group, in its discretion, may determine. Medical Group intends to work out equitable arrangements under which Additional Compensation paid pursuant to this Article will be distributed, in whole or in part, among partners and employees on an individual, department, subgroup, or other appropriate basis so as to constitute an effective incentive for efforts of individuals, departments and subgroups to further the common interests of Health Plan and Medical Group in providing maximum benefits to Members at the most reasonable cost consistent with maintaining accepted professional standards of Medical Services and Hospital Services.

Article J

Responsibility for Facilities and Administration

Under this Agreement Health Plan is primarily responsible for providing facilities and general administrative services required or convenient in connection with the administration of the nonprofit hospital and medical service program; however, Medical Group controls, and is primarily responsible for the actual operation of outpatient medical offices, and, as a consequence, may most conveniently provide certain administrative services in connection with the nonprofit hospital and medical service program.

This Article outlines major responsibilities of Health Plan and Medical Group with respect to facilities and administration. Medical Group shall carry out its responsibilities relating to facilities and administration as provided by this Article and elsewhere in the Agreement for the consideration specified in Articles H and I, except to the extent that additional consideration is expressly provided.

Section J-1. Collection of Health Plan Revenue

Health Plan shall be primarily responsible for collecting

and receiving all Health Plan Revenue; Health Plan shall directly collect Dues and such Supplemental Charges as it may conveniently collect, and shall have functional responsibility for collection of all Health Plan Revenue.

In certain situations and at certain locations some categories of Health Plan Revenue may, in the first instance, be more conveniently collected by Medical Group. In such situations, Medical Group shall, to the extent requested by Health Plan, collect Health Plan Revenue for the account of Health Plan in accordance with the policies and procedures established by Health Plan; however, Medical Group shall retain administrative responsibility over all Medical Group personnel engaged in the collection of Health Plan Revenue. In consideration of the services rendered by Medical Group in the collection of Health Plan Revenue, and in addition to all other payments to Medical Group provided for by this Agreement, Health Plan shall pay to Medical Group a reasonable allowance to cover costs actually incurred by Medical Group in so collecting Health Plan Revenue. Said allowance shall be established by mutual agreement or by fair and realistic allocation of Medical Group costs in accordance with sound accounting principles.

Section J-2. Providing Medical Facilities and Equipment

Health Plan is responsible for providing satisfactory medical facilities together with Built-in Equipment and Movable Equipment reasonably required by Medical Group in furnishing Medical Services pursuant to this Agreement; provided, however, that Health Plan reserves the right of final decision as to additional facilities and expansion of existing facilities provided by it. Health Plan may carry out this responsibility by purchasing, contracting for, leasing or constructing appropriate facilities; regardless of how such facilities are acquired by Health Plan, all such facilities requested by Medical Group, excepting hospital facilities, shall be leased to Medical Group on mutually agreeable terms which will insure that, for the duration of each such lease, Medical Group shall have exclusive control of such facilities and of all medical practice conducted therein.

Health Plan's responsibility to provide facilities reasonably required for the rendition of Medical Services hereunder is not intended to limit Medical Group in any

way in purchasing, constructing, leasing or otherwise acquiring such equipment and facilities as it may desire, but costs or rental charges incurred on expenditures or investments made by Medical Group in so acquiring facilities or equipment shall not be taken into account in any fashion in determining payments to Medical Group under this Agreement unless such equipment and facility acquisitions have the prior written approval of Health Plan.

Article K

Claims Adjustment and Settlement

As a consequence of Health Plan's nonprofit hospital and medical service program, a variety of Claims, as defined in Section A-6, arise against Health Plan or Medical Group or Hospitals, or against any two or all of said contracting organizations. The difficulties, expenses and disadvantages of determining and allocating final responsibility for many such Claims, and the advantages of handling all such Claims on a cooperative basis, are such that it appears to be to the mutual advantage of the parties to this Agreement and of Hospitals to handle all such Claims in the manner provided in this Article.

Section K-1. Insurance

Medical Group shall maintain insurance in amounts and with carriers satisfactory to Health Plan covering Liability Claims and liability aspects of Mixed Claims.

Unless otherwise agreed between Health Plan and Medical Group, it is understood that for the period of this Agreement insurance with limits of $600,000 on account of liability to any one person arising out of any occurrence, and $3,000,000 on account of aggregate liability to all claimants during an insurance policy year shall be deemed sufficient. There may be excluded from the protection afforded by such insurance the first $25,000 of liability on account of any occurrence. Different liability limits may be approved by Health Plan with respect to particular classes of risks.

Section K-2. Payment of Premiums

Health Plan shall pay, as Health Plan expenses, all premiums applicable to insurance carried by Medical Group

pursuant to the requirements of the foregoing paragraph. In this connection it is understood that Health Plan's responsibilities relating to Claims arising out of acts or omissions of Medical Group, Physicians, Other Personnel and agents or other representatives is limited to payment of premiums on such insurance as Medical Group, acting with the approval of Health Plan, shall place, and that Health Plan has no responsibility to see that such insurance is either placed or maintained in effect.

Section K-3. Adjustment, Defense and Settlement of Claims

Health Plan shall make arrangements for adjusting, defending, settling and paying Claims, and shall incur, as Health Plan expenses, all costs incurred in connection therewith, including the cost of discharging liability established by settlement or judgment within the scope of the $25,000 uninsured liability permitted by the provisions of Section K-1. Health Plan shall have no responsibility by reason of this Agreement for paying liability established by settlement or judgment in excess of $25,000 on account of any single occurrence.

In carrying out its responsibilities in connection with adjusting, defending, settling and paying Claims, Health Plan shall maintain liaison with Medical Group, and Health Plan shall not cause any Claim asserted against Medical Group to be settled or paid without the approval of Medical Group.

Section K-4. Loss Prevention Program

Health Plan shall bear, as Health Plan expenses, all costs incurred in connection with a loss prevention program to be conducted under the general supervision of Medical Group for the purpose of reducing losses to Hospitals, Health Plan and Medical Group on account of claims. Said loss prevention program shall be conducted on a cooperative basis as a joint effort of Hospitals, Health Plan and Medical Group, acting with such assistance from attorneys experienced in liability matters and other qualified personnel as may appear most advantageous to the efficient and economical conduct of the loss prevention program.

Health Plan's responsibility for bearing the costs of such

program shall not include compensation to Hospital or Medical Group personnel devoting time to such program.

Section K-5. Fundamental Responsibility for Claims

Although for the mutual convenience of the parties to this Agreement and Hospitals, Health Plan is undertaking to pay insurance premiums and certain other specified costs in connection with Claims, it is recognized that fundamental responsibility for most Liability Claims and many other Clams rests with Medical Group and Hospitals as providers of services. It is not the intention of this Agreement to shift such ultimate responsibility; instead, this Agreement is intended simply to provide convenient and mutually advantageous arrangements for disposing of Claims, without regard to ultimate responsibility therefor, within the limitations herein specified.

Health Plan will discharge its obligations in connection with payment of premiums and disposition of Claims on a current basis, because Health Plan has no reserves nor satisfactory means of accumulating reserves for meeting obligations in connection with Claims. Accordingly, it is understood that Health Plan's obligations under this Article K shall continue only so long as this Agreement, or any renewal or extension hereof, is in effect between the parties hereto.

Incident to the establishment of arrangements as provided in this Article for handling of Claims on a current basis, Health Plan shall be entitled to receive such refunds, if any, as may be applicable to liability insurance covering Medical Services and Hospital Services to Health Plan Members in prior years, and related risks; and Health Plan shall be responsible for such premium adjustments and legal expense, if any, as may be required by reason of insurance in effect and claims incurred with respect to such prior years. Except as provided in the preceding sentence, Health Plan's obligations under this Article shall be limited as follows:

a. Health Plan's obligation to pay insurance premiums shall apply only to premiums applicable on a pro-rata basis to the period of this Agreement.

b. Health Plan's obligations to arrange for and pay for defense, adjustment and settlement of Claims shall cover

only such expenses as are incurred for services rendered during the period of this Agreement.

c. Health Plan's obligation to satisfy liability established by judgment or settlement shall extend only to settlements agreed upon, and liabilities established by judgments becoming final, during the term of this Agreement.

Any expense or obligation connected with Claims not specifically assumed by Health Plan under this Article K, including liability in excess of insurance policy limits, liability not covered by insurance (excepting liability within the scope of the $25,000 deductible portion of insurance in effect) and Claims adjustment, defense and settlement expense, and costs of discharging liability established by judgment or settlement after termination of this Agreement, shall be for the sole account of Medical Group, Hospitals or Health Plan in accordance with their ultimate responsibilities, unaffected by this agreement.

Section K-6. Claims Against Health Plan Only

Health Plan shall have sole responsibility for adjusting, settling or defending all Claims not involving any alleged act or omission on the part of Medical Group or Hospitals, including Out-of-Area Claims. To the extent that such Claims involve problems of medical judgment relating to the emergency nature of Medical Services and similar matters, Medical Group shall, if so requested by Health Plan, consult with and advise Health Plan.

Section K-7. Malpractice Reserve.

As protection to Medical Group and Health Plan against liability, uninsured under the $25,000 deductible provision referred to in Section K-1, in the event that this Agreement or any renewal or extension hereof shall in the future not be in effect between the parties hereto, Health Plan shall reserve such sum, if any, as may be mutually agreed upon between Health Plan and Medical Group, which reserve shall be held by Health Plan under a trust, agreement or other mutually satisfactory arrangement providing, in substance:

a. That the value represented by such reserve shall not be utilized or distributed for any purpose except payment of liability established by settlement or judgment after termination of this Agreement and all extensions or re-

newals hereof, and adjustment and defense costs incurred after such termination, on account of claims or suits alleging liability for personal injury against Medical Group or Physicians or Other Personnel of Medical Group, either alone or in conjunction with other defendants, which liability is uninsured by reason of the $25,000 deductible provision referred to above.

b. That the reserve may be invested in assets required in connection with Health Plan operations, provided that the value is soundly maintained.

c. That after termination of this Agreement and all succeeding continuations or renewals hereof, amounts so reserved in excess of amounts reasonably required under sound and conservative standards to provide fully for all potential outstanding liability and related defense and adjustment expense to which such reserve could properly be applied, may be applied and utilized by Health Plan in furtherance of Health Plan purposes or paid to Kaiser Foundation Hospitals or such other corporation or foundation organized and operated for public hospital charitable, research, educational or similar purposes, as the Board of Directors of Health Plan may designate, or distributed in such other manner as may be mutually agreed between Medical Group and Health Plan.

Part IV.

PROVISIONS RELATING TO LIAISON AND COOPERATION

Article L

Exchange of Information and Cooperation Regarding Policies

In order to achieve orderly and effective administration of this Agreement and of Membership Contracts covering Health Plan Members within the Service Area, a full exchange of information between Health Plan and Medical Group and full cooperation regarding policies and major decisions of Health Plan and Medical Group in all matters affecting Health Plan's nonprofit hospital and medical service program, arrangements for Medical and Hospital Services, and necessary facilities is essential. The follow-

ing arrangements are made in furtherance of these purposes:

Section L-1. Inspection of Records, Facilities, Etc.

Both Health Plan and Medical Group shall have the right to inspect accounting and administrative books and records maintained, and facilities owned or operated by, the other party at all reasonable times.

Section L-2. Medical Records

Health Plan shall arrange for medical records of Members, maintained by Hospitals, to be available to Medical Group; medical records of Members maintained by Medical Group shall be available to Health Plan for inspection and use in connection with all matters relating to Claims, and with respect to other matters arising in connection with the administration of Membership Contracts to the fullest extent consistent with maintaining the confidences of patients as required by the physician-patient relationship and the Principles of Medical Ethics of the American Medical Association.

Section L-3. Other Information

In addition to the foregoing particular matters, Medical Group and Health Plan shall maintain a free exchange of information regarding all other matters relating to or connected with the administration of this Agreement and of Membership Contracts covering Members in the Service Area.

Section L-4. Changes in Facilities

No substantial changes in or additions to facilities for serving Health Plan Members in the Service Area shall be made until after proposed changes or additions have been discussed and considered jointly by Health Plan and Medical Group.

Section L-5. Rates

The parties desire to provide Medical Group with maximum freedom to carry out its responsibilities to provide Medical Services in accordance with the professional standards and judgment of Medical Group and without inter-

ference by Health Plan in the establishment and control of standards of medical care, but with due respect for basic economic limitations under which any medical and hospital service program must operate. Accordingly, it is understood and agreed that, prior to effecting any changes in the schedule of prepaid Dues and Supplemental Charges, Health Plan will consult with Medical Group regarding additional services and additional medical care requirements suggested or proposed by Medical Group, and will consider the costs thereof, in conjunction with all other factors affecting Health Plan rates, to the end that funds for additional medical services and medical care requirements shall, to the fullest extent practical, be provided in a manner which does not require specific Health Plan approval for any such additional service or additional requirement.

Section L-6. Interpretation of Contracts.

Policy questions relating to the interpretation of Membership Contracts shall be subject to joint discussion and consideration by Health Plan and Medical Group, with final authority on questions of interpretation being distributed as follows:

a. *Medical Questions.* All questions relating to interpretation of Membership Contracts primarily involving questions of a medical nature or relating primarily to physician-patient relationships or to the professional and ethical responsibilities of physicians shall be resolved by Medical Group after joint discussion with Health Plan.

b. *Other Matters.* All matters of interpretation arising under Membership Contracts which do not involve primarily questions of a medical nature or relating primarily to physician-patient relationships, or to the professional ethical responsibilities of physicians shall be finally resolved by Health Plan after joint discussion with Medical Group. This classification includes questions relating to membership relations and moral responsibility as well as questions of legal responsibility.

Executed July 15, 1959, at Oakland, California, to take effect as of July 1, 1959.

THE PERMANENTE MEDICAL GROUP,
A Limited Partnership

By C. C. Cutting, M.D.
C. C. CUTTING, M.D.
General Partner

KAISER FOUNDATION HEALTH PLAN, INC.
A California Nonprofit Corporation.

By Fred W. Tennant
FRED W. TENNANT
Regional Manager

KAISER FOUNDATION HEALTH PLAN, INC.
OAKLAND, CALIFORNIA PHONE OLYMPIC 4-2090

The Permanente Medical Group
368 42nd Street
Oakland 9, California

Attention: C. C. Cutting, Executive Director

Gentlemen:

This Letter of Understanding supplements our Medical Service Agreement for the Period July 1, 1959 through June 30, 1961, and shall continue subject to such amendments as may be mutually agreed upon, so long as said Medical Service Agreement, or any renewal or extension thereof, shall remain in effect.

1. *Effect of Certain Membership Contract Exclusions*

Pursuant to Section A-3-d-3, it is understood that to the extent the relevant exclusions in membership contracts are, in fact, applied, professional services for Health Plan Members treated for the conditions hereafter enumerated shall be deemed Private and Industrial Medical Services:

a) Waived conditions
b) Psychiatric care
c) Tuberculosis, after Diagnosis *
d) Fertility Studies
e) Cosmetic Surgery
f) Dental X-Rays (when not covered under Health Plan contracts)
g) Services for Patients hospitalized for Dental Surgery
h) Conditions resulting from Attempts at Suicide
i) Intentionally Self-Inflected Injuries or Illnesses, or complications resulting therefrom
j) Alcoholism

* (Refer to Health Plan Office for Members in Groups 4, 6, 14, 24, 33, 83, 101, 124, 183, 222, 293, 364, 399 and 710)

k) Conditions for which the Member is entitled to receive care from the Veterans Administration

l) The following contagious diseases (except that diagnostic services for such diseases are not included):

Amebiasis, including dysentery
Anthrax
Chicken pox (varicella)
Cholera
Choreomeningitis, lymphocytic
Coccidiomycosis
Diarrhea, infectious, of infants
Diphtheria
Dysentery, bacterial
Encephalitis, infectious
Glanders
Leprosy
Measles (rubeola)
Measles (German (rubella))
Meningococcal infections (including epidemic meningitis)
Mumps
Pertussis (whooping cough)
Plague
Poliomyelitis, acute
Rabies
Salmonella infections (including paratyphoid)
Scarlet Fever
Small pox (variola)
Trachoma
Tuberculosis
Typhoid Fever
Vulvovaginitis in children
Yellow Fever

2. *Medical Group Direct Revenue*

Supplementing Section A-4-a-6, it is understood that the following categories of revenue are excluded from the definition of Health Plan Revenue and shall constitute Medical Group direct revenue:

a) Sales by Medical Group of medical supplies, such as ace bandages, and including manufactured

materials sold to other than Health Plan Members, or not included in Membership coverage.

b) Amounts received by Medical Group as witness fees or on account of completing claim forms, or inductrial medical, or other medical reports.

3. *Policy on Literature and Publicity*

As a matter of operating policy, Health Plan shall consult with, and obtain the approval of Medical Group before distributing literature or other material or presenting or releasing other publicity (radio and television broadcasts) pursuant to Sections E-2, E-3 and E-4, where such literature material or publicity relates to the rendering of professional medical services.

4. *Operation of Optical Departments*

Supplementing Section J-1, it is understood that in connection with the operation of Optical Departments, Medical Group shall collect Optical Department revenue for Health Plan's account, and Health Plan shall reimburse Medical Group for all costs or expenses paid or incurred by Medical Group directly connected with operating Optical Departments and collecting Optical Department revenue except for costs and expenses incident to furnishing of professional services in the prescribing of lenses, which latter expenses Medical Group shall bear.

5. *Leasing of Facilities*

Supplementing Section J-2, it is understood that all costs and expenses incurred by Health Plan in connection with the acquisition and leasing of facilities constitute Health Plan operating expenses, provided, however, that the recovery of capital costs at a rate faster than that provided by normal depreciation and over a period of less than fifteen years shall require the prior approval of Medical Group.

6. *Malpractice Reserve*

Supplementing Section K-7, it is understood that Health Plan will endeavor, in cooperating with Medi-

cal Group, to work out a mutually satisfactory basis for handling the problem of malpractice reserves to take effect commencing not later than July, 1961, the expected date of renewal or extension of the Medical Service Agreement.

It is, of course, understood that the Medical Service Agreement effective July 1, 1959, to which this letter is an addendum, is a continuation of the main provisions of the preceding Medical Service Agreement effective April 1, 1958 through June 30, 1959. It is further understood that the provisions of Section H-3 were negotiated for purposes of this Agreement only and do not necessarily constitute a precedent for similar compensation adjustments in future Medical Service Agreements or renewals or extensions of this Medical Service Agreement.

KAISER FOUNDATION HEALTH PLAN, INC.

By Fred W. Tennant
Northern California Regional Manager

The foregoing Letter of Understanding is accepted and agreed to this 25 day of July, 1959.

THE PERMANENTE MEDICAL GROUP

By C. C. Cutting
C. C. CUTTING
Executive Director

AMENDMENT TO MEDICAL SERVICE AGREEMENT

Northern California Region

Kaiser Foundation Health Plan, Inc., a California nonprofit corporation, and The Permanente Medical Group, a limited partnership, hereby adopt the following amendments to the Medical Service Agreement between them covering the period from July 1, 1959 through June 30, 1961, as amended to cover the period July 1, 1961 through June 30, 1962:

Equal Employment Opportunity

Health Plan has executed a contract with the United States Civil Service Commission which, pursuant to Executive Order No. 10925, requires Health Plan to insert the following provisions concerning Equal Employment Opportunity in all contracts which it executes with subcontractors in which a material part of the services covered will be rendered in the performance of the Health Plan's contract with the Civil Service Commission.

Section 1. Nondiscrimination Provision.

Medical Group will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin . Medical Group will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Medical Group agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

Section 2. Solicitation or Advertisement for Employees.

Medical Group will, in all solicitations or advertisements

for employees placed by or on behalf of Medical Group, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

Section 3. Notice to Labor Unions.

Medical Group will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of Medical Group's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Section 4. Compliance with Executive Order No. 10925 and Rules and Regulations.

Medical Group will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

Section 5. Furnishing Information and Reports.

Medical Group will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

Section 6. Termination for Non-compliance.

In the event of Medical Group's non-compliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be cancelled in whole or in part and Medical Group may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of

the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

Executed March 19, 1962 at Oakland, California, to take effect as of March 19, 1962.

THE PERMANENTE MEDICAL GROUP,
A limited partnership

By C. C. Cutting, M.D.
General Partner

KAISER FOUNDATION HEALTH PLAN, INC.
A California nonprofit corporation

By Fred W. Tennant
Regional Manager

TRUST AGREEMENT

Retirement Plan for The Permanente Medical Group

EXHIBIT C

Trust Agreement

Retirement Plan for The Permanente Medical Group

This Trust Agreement among Kaiser Foundation Health Plan, Inc., a California nonprofit corporation, (hereinafter called "Health Plan"), The Permanente Medical Group, a limited partnership of physicians, (hereinafter called "Medical Group"), and Bank of America National Trust and Savings Association, (hereinafter called "Trustee"), has been entered into effective as of the 1st day of July, 1959, by reason of the following circumstances:

I. Health Plan and Medical Group desire to establish a plan to provide retirement incomes and other benefits for physicians associated with Medical Group who qualify under the standards provided in this Trust Agreement, subject to the conditions and limitations hereinafter set forth, and desire to establish a Trust to assist in carrying out such plan. Trustee is willing to accept such Trust in accordance with the terms of this Trust Agreement.

II. The parties recognize that many presently unforeseen factors may make it necessary or desirable to extend the coverage of this Agreement to other physicians or other medical groups or otherwise modify this Agreement, and desire to maintain maximum flexibility to the end that the basic purposes of this Trust Agreement, namely, establishing a means for providing retirement incomes and other benefits to physicians cooperating with Health Plan in providing medical services to Health Plan members, may be achieved in the most efficient, practical and economical manner.

By reason of the foregoing circumstances and for the purpose of carrying out the purposes just described, the parties hereby agree as follows:

Article A.

Definitions

As used in this Trust Agreement the terms set forth in this Article shall have the meanings set forth herein, except

where from the context it is clear that such meanings are not intended.

Section A-1. Parties to or Affected by Agreement.

a. "Medical Group" shall mean The Permanente Medical Group, a limited partnership whose original Certificate of Partnership was filed with the County Clerk of Alameda County, California, June 29, 1949 in Book 5963 on page 595, and shall include the group of physicians who are partners in or otherwise associated with The DeKruif, Eckhardt, Mott, Rubin, Stricker Medical Group, a general partnership of physicians practicing medicine in San Leandro, California, and vicinity, as such medical groups now exist and as they may be changed from time to time by the addition of new personnel, by retirement, by reorganization, or otherwise.

b. "Health Plan" shall mean the Northern California Region, a separate division of Kaiser Foundation Health Plan, Inc., a California nonprofit corporation.

c. "Member" shall mean any person regularly entitled to medical services from Medical Group pursuant to a service contract issued by Health Plan.

d. "Participant" shall mean a physician who meets the requirements established by Section D-2, for participation in the benefits contemplated by this Trust Agreement, and elects so to participate.

e. "Trustee" shall mean Bank of America National Trust and Savings Association and any successor thereto appointed pursuant to Section K-1 hereof.

f. "Insurer" shall mean the insurance company selected to write the group annuity deposit administration contract contemplated by this Trust Agreement, and in the event that the insurance company initially selected, or any insurance company subsequently selected, shall for any reason be replaced, said term shall apply to successor insurance companies.

g. "Affiliated Medical Group" shall mean any partnership, or other organization of physicians which provides professional medical services pursuant to a contract with Health Plan or with any other corporation or organization conducting the Kaiser Foundation Health Plan medical and hospital service program in any geographical area, and

which is not the Medical Group under this Trust Agreement.

Section A-2. Other Definitions.

a. "Continuous Full-time Association" shall mean association with Medical Group as an employee or partner devoting substantially full time, in accordance with the standards from time to time established by Medical Group, to the rendition of medical and necessary administrative services in connection with Medical Group's medical practice; provided, however, that after such association has been established, leaves of absence granted by Medical Group for or on account of any of the following purposes:

i. Military service;

ii. Medical research;

iii. Advance study in the field of medicine;

iv. Temporary disability;

v. Any other purpose which Medical Group shall authorize and which the Retirement committee shall approve;

shall not be deducted in determining the extent of Continuous Full-time Association for any purpose under this Trust Agreement.

In accordance with Article H, association with an Affiliated Medical Group may also be considered Continuous Full-time Association under this Trust Agreement. Notwithstanding the preceding provisions of this definition, Continuous Full-time Association prior to the effective date of this Trust Agreement by any Participant who became a Participant under the Trust Agreement on said effective date shall be the number of years shown after the Participant's name in Schedule 1 of Appendix A to this Trust Agreement.

b. "Fiscal Year" shall mean the twelve months period from July 1st through June 30th, inclusive.

c. "Retirement Committee" shall mean the committee provided for in Section J-1.

d. "Medical Subcommittee of Retirement Committee" shall mean that committee provided for in Section J-2.

Article B.

Contributions

Section B-1. Initial Contribution.

Health Plan hereby contributes to this Trust as an initial deposit hereunder, and Trustee acknowledges receipt of, the sum of Two Hundred Thousand Dollars ($200,000.00) representing a portion of the amount agreed to be paid by Health Plan for physician retirement income and other benefits during 1959.

Section B-2. Further Contributions.

It is contemplated that Health Plan will continue, indefinitely contract with Medical Group for medical services to Health Plan Members in the San Francisco Bay Area and vicinity; and it is further contemplated that, so long as such contractual relations between Health Plan and Medical Group continue, Health Plan will contribute a certain sum per Member per month to this Trust, to be held, applied and distributed in accordance with the provisions of this Trust Agreement. However, it is distinctly understood that Health Plan's obligation to make contributions to this Trust depends entirely upon, and is governed by, medical service agreements between Health Plan and Medical Group, and this Trust Agreement does not obligate Health Plan to make any future contributions to this Trust. Effective July 1, 1959 and continuing thereafter until changed by future medical service agreements between Health Plan and Medical Group, the rate of Health Plan's contribution to this Trust shall be twelve (12) cents per member per month. The basis for determining membership for the purpose of such contributions, and the time of payment thereof, shall be the same as that in effect from time to time for compensating Medical Group for providing medical services to Health Plan Members.

Section B-3. Payment to Insurer.

Trustee shall receive all amounts contributed to this Trust, and, after deducting such amounts as Trustee is authorized to retain under Section K-3 of this Trust Agreement, shall promptly pay over the balance, or, if so directed

by the Retirement Committee, a part of such balance to the Insurer under the master contract or contracts to be entered into pursuant to Section C-1, as initially established, or as changed from time to time pursuant to this Trust Agreement. Any part of such balance that the Trustee is not directed to pay to the Insurer shall be invested by the Trustee in accordance with the provisions of Section K-2 of this Trust Agreement.

Article C.

Deposit Administration

Section C-1. Master Contract.

In order to provide the retirement income benefits contemplated by this Trust Agreement, Trustee shall enter into a deposit administration contract, satisfactory to the Retirement Committee, with an insurance company satisfactory to the Retirement Committee, authorized to do business in the State of California.

In addition to such guaranties and other provisions as may be negotiated relating to interest, insurance rates, benefits and other matters, the master contract shall require that the Insurer shall properly keep such records and accounts as may be reasonably necessary for the administration of this Trust Agreement and the master contract.

Section C-2. Insurer to Rely on and Follow Directions of Trustee.

In all actions which it takes in connection with the administration of the master contract and this Trust Agreement, the Insurer shall follow the directions of the Trustee and shall not be required to deal with any other party hereto or Participant or other beneficiary hereunder, except to the extent that it may be so directed by Trustee.

Insurer shall not be responsible for the validity or interpretation of this Trust, and shall not be required to look to the terms hereof, or to see that any action or direction of the Trustee is authorized or permitted hereby, or otherwise to question any such action.

Insurer shall be fully protected in taking or permitting any action in connection with the master contract or this Trust Agreement in reliance on a written instrument ex-

ecuted by the Trustee acting as such, and shall incur no liability for so doing.

However, nothing in this Section shall relieve Insurer of responsibility for any error or omission in carrying out its own functions and responsibilities under the master contract on the basis of information or directions furnished by the Trustee.

Section C-3. Termination of Master Contract.

Any master contract entered into by Trustee pursuant to this Trust Agreement shall permit Trustee, acting pursuant to the advice or written approval of the Retirement Committee, to amend, terminate or replace the master contract at any time, or to withdraw funds deposited pursuant to the master contract and apply such funds for the purposes contemplated by this Trust Agreement in such manner as may appear best suited to providing maximum benefits with the contributions made hereunder and otherwise carrying out the purposes hereof; provided, however, that no amendment or termination of any master contract and no withdrawal or application of funds permitted by this Section shall operate to accelerate the rights of Participants to receive or direct or otherwise control the application of funds being administered hereunder, except upon the written approval of Health Plan or its successor or successors in interest, Medical Group, or its successor or successors in interest, all members of the Retirement Committee, and seventy-five percent (75%) in number of all Participants.

Article D.

Eligibility to Participate

Section D-1. Medical Group Eligibility.

Medical Group shall, upon execution of this Trust Agreement, be eligible to participate hereunder.

Section D-2. Eligibility of Individual Physicians.

Each physician who has completed two years of Continuous Full-time Association with Medical Group on July 1, 1959 shall be eligible to participate as of July 1, 1959.

Any other physician who completes two years of Continuous Full-time Association with Medical Group, as determined in accordance with the rules established by Medical Group, shall be eligible to participate as of the July 1st coinciding with or next following completion of such association, and transferring physicians shall become eligible in accordance with subsection E-1.d. When eligible, a physician may become a Participant by executing an election to participate in the manner and form prescribed by the Trustee; such election shall be executed and delivered to Health Plan for transmission to the Trustee not later than thirty (30) days following the date of eligibility.

Section D-3. Certificates of Eligibility.

By September 15 of each year Medical Group shall deliver to Health Plan for transmission to Trustee a certified report containing such information with respect to all Participants as the Trustee or Insurer may require in the administration of this Trust or of the deposit administration contract or contracts contemplated by Article C hereof. Such required information is expected to include, but is not necessarily limited to, names, dates of birth, extent of Continuous Full-time Association, extent of any leaves of absence permitted hereunder without breaking Continuous Full-time Association, and rates of base salary, base drawing accounts, or other elements of compensation required by the allocation formula developed pursuant to Article E of this Trust Agreement.

Article E.

Allocation to Group and Individual Accounts

Section E-1. Group Accounts.

The Insurer shall maintain an account for Medical Group and shall allocate all contributions made hereunder, and all interest, increments resulting from forfeitures, dividends and other earnings, to the Medical Group account. Said account constitutes only a convenience in the administration of this Trust, and shall establish no right, on behalf of Medical Group or any Participant in the assets represented by said account.

Section E-2. Tentative Individual Accounts—Unit Allocation Formula.

Within the Medical Group account Insurer shall maintain a tentative individual account for each Participant in the Medical Group, and shall make allocations to such tentative accounts in accordance with an allocation formula to be approved by Health Plan, Medical Group and Trustee and set forth as Appendix A to this Trust Agreement. Said allocation formula shall provide for the tentative allocation to the account of each individual Participant of a portion of funds available for allocation, based upon the compensation level, length of service and age of each Participant, as compared with similar factors applicable to all other Participants in the Medical Group. The formula will provide for assignment of units to each physician each Fiscal Year, and promptly upon receipt of the certificates required by Section D-3, the Insurer shall compute the total number of units for Medical Group and the number of units allocable to each Participant within Medical Group.

Section E-3. Determination of Unit Values—Allocation.

As promptly as practical following the close of each Fiscal Year the Insurer shall determine a unit value for Medical Group as follows:

The total of the following amounts shall be determined for the Fiscal Year:

a. Contributions received during such year and interest earned thereon;
b. All increments of value resulting from forfeitures occurring during such year by reason of;
    i. Termination, for any reason other than transfer in accordance with Article E, of the services of any Participant, prior to the date of eligibility for retirement or accelerated retirement in accordance with the standards established by Article F hereof;
    ii. Failure of a Participant eligible for such retirement or accelerated retirement, or of a retired Participant, to observe and comply with the conditions for continued eligibility for benefits;
c. All dividends earned under the master contract and

all other earnings or increments of value, from whatever source, not covered by the foregoing subsections of this Section E-3 or by Section E-5.

The Insurer shall then divide the total so determined by the total number of units for the Fiscal Year within Medical Group, and shall allocate to the tentative individual account of each Participant the amount determined by multiplying such value per unit by the number of units allocated to such Participant.

Section E-4. Units for Partial Year.

If, owing to retirement during a Fiscal Year, leave of absence permitted by Section A-2 without break of Continuous Full-time Association, transfer or other circumstance approved by the Retirement Committee, a Participant devotes less than substantially full time to the rendition of medical or necessary administrative services in connection with Medical Group's practice during any Fiscal Year, the number of units otherwise allocable to such Participant shall be correspondingly reduced for the purpose of all computations and allocations pursuant to Section E-2 and Section E-3.

Section E-5. Interest on Tentative Accounts.

All interest earned under a deposit administration contract applicable to funds tentatively allocated to individual accounts and all other earnings, if any, derived from the investment of such funds other than under a deposit administration contract shall be allocated to such tentative individual accounts at least annually.

Section E-6. Tentative Accounts Establish No Rights.

The tentative accounts and suspended tentative accounts provided for Participants hereunder are solely for the purpose of facilitating record keeping and necessary computations, and confer no rights in the trust fund upon the individuals for whom they are established. Rights to any part of the trust fund or to any benefits under this Trust Agreement, shall exist only at the time, in the manner, to the extent and subject to the limitations and conditions set forth in Article F relating to eligibility for benefits.

Section E-7. Trustee to Establish Accounts.

In the event that the Trustee is requested to hold and invest assets hereunder by the Retirement Committee, the Trustee shall establish and administer both Medical Group and tentative individual accounts in a manner acceptable to both the Retirement Committee and the Trustee, which shall be generally similar to that set forth for the Insurer in the preceding provisions of this Article E.

ARTICLE F.

Eligibility for Benefits

Section F-1. Qualification for Retirement Benefits.

To qualify for a retirement benefit pursuant to this Trust Agreement a Participant must commence Continuous Full-time Association prior to the July 2nd next following his 60th birthday and must either:

a. Complete at least fifteen (15) years of Continuous Full-time Association, or

b. Complete at least ten (10) years of Continuous Full-time Association and attain the age of sixty-five (65) years.

Section F-2. Retirement.

Commencing as of the month next following the effective date of his retirement, and continuing so long as he shall continue to meet the requirements of Section F-4 for continuing retirement benefits, a Participant shall be entitled to receive that monthly retirement income determined as follows:

a. The amount credited to his tentative account or accounts as of June 30 of the year preceding his retirement (or, in the case of any particular account, as of such later date as may be determined by the Retirement Committee) shall be applied to the purchase of a retirement income contract under the primary settlement option provided by the applicable master contract; or, if any election in the form prescribed by the Insurer is made, such amount shall be similarly applied toward the purchase of the optional settlement so elected.

b. As soon as practical after the end of the Fiscal Year during which the Participant retires, the primary or op-

tional retirement income contract selected pursuant to subsection F-2.a. shall be augmented by application of such additional credit to the Participant's tentative individual account or accounts as may result from the Participant's additional allocation for the Fiscal Year during which his retirement occurs.

Section F-3. Deferred Retirement Income.

A Participant may also elect to defer commencing receipt of retirement income for such time as he may desire, but in no event shall retirement income be deferred beyond the beginning of the Fiscal Year next following the Participant's seventieth birthday. If the Participant elects to defer receipt of his retirement income, his retirement income shall be the actuarial equivalent, at the time so elected, of the retirement income to which he would be entitled under Section F-2, [adjusted for additional interest earnings, if any, attributable to the Participant's tentative individual account.]

Section F-4. Requirements for Continuing Retirement Income.

Retirement income payments being made to any retired Participant pursuant to any of the foregoing sections of this Article or pursuant to Section G-1 shall be discontinued, and such retired Participant shall have no further eligibility for, nor right to receive, retirement income pursuant to this Trust Agreement, when, as, and if, any of the following disqualifying circumstances shall occur:

a. If the retired Participant shall, without the prior written consent of Health Plan, render professional medical services on behalf of any other hospital and medical service plan operated on a group practice prepayment basis within any county, in California, Oregon, Washington, or Hawaii, any part of which is within the service area of Health Plan, or within any service area of Kaiser Foundation Health Plan, Inc., a California nonprofit corporation, or the successors of either of them;

b. If, while being physically fit, and legally entitled, to practice medicine, and while being present within any Health Plan service area he shall fail or refuse to render consulting services when reasonably so requested by any

medical group practicing in said area and contracting with Health Plan for the rendition of medical services. Retired Participants shall be entitled to receive reasonable compensation from the medical group requesting consultation on account of any consulting services so rendered.

The Medical Subcommittee of the Retirement Committee shall have the right, at any time and from time to time, to prescribe conditions to the receipt or continued receipt of benefits hereunder by retiring or retired Participants. Such conditions shall, insofar as possible, apply uniformly to all such retiring and retired Participants.

The disqualification established by this Section shall extend to all payments to which the retired Participant or his personal representatives or any beneficiary whose right to any such payment is derived from the eligibility of the Participant for benefits hereunder would otherwise be entitled; provided, however, that the Trustee shall be under no obligation to recover from any such Participant, representative or beneficiary any payments which may have been made between the occurrence of a disqualifying event and the discontinuance of payments.

Section F-5. Determination of Disqualification.

Health Plan, Medical Group, and any Participant, may advise the Trustee of facts indicating that any retired Participant has become disqualified under the provisions of Section F-5, and upon receipt of any such advice the Trustee shall make an investigation and shall determine whether or not such retired Participant has become disqualified; provided, however, that in the event the Trustee's determination is adverse to the retired Participant, he or his successor or successors in interest may, by written application to the Trustee made within six (6) months after written advice of the determination, have such determination reviewed by the Retirement Committee. The decision of the Retirement Committee on any such review shall be final and conclusive on all persons interested.

Article G.

Alternative Distribution Provisions

Section G-1. Permanent Disability.

If a Participant, prior to qualifying for a retirement

benefit, suffers a disability of a substantially permanent nature sufficient to preclude him from conducting a normal medical practice, his entitlement to benefits hereunder shall be the same as though he were qualified for a retirement benefit and had retired as of the date on which such permanent disability is determined to have commenced.

All determinations relating to disability required for the administration of this Section shall be made by a panel of three (3) physicians to be chosen by the Retirement Committee. Any Participant claiming to qualify for benefits under this Section G-1 shall submit to all reasonable examinations and other investigations which the panel may require. The panel shall act by a majority vote and shall certify its findings as to disability to the Trustee; such findings as so certified shall be conclusive as to the claim involved and binding on all parties interested hereunder.

The Committee may establish and amend standards, for determining disability, for the guidance of any panel appointed hereunder; provided, however, that such standards must be of general applicability and not prepared or amended with respect to conditions peculiar to any particular case.

Section G-2. Return to Practice after Permanent Disability.

If a Participant who has been certified to be permanently disabled should return to practice in association with Medical Group, or an Affiliated Medical Group, such return shall not affect any benefits to which he is entitled under Section G-1, and in connection with such new association he shall be treated in all respects as a physician who has become associated with Medical Group or an Affiliated Medical Group for the first time; provided, however, that such physician may, subject to the approval of the Insurer, have his retirement benefits terminated and have the cash equivalent thereof at the date of such termination restored to his tentative individual account to augment such benefits as might be subsequently credited to such account; provided further, that in such event, regardless of any other standards of qualification for retirement benefits, he shall also be deemed so qualified, effective as of the date on which he attains the age of sixty-five (65) years.

Section G-3. Death Prior to Commencement of Benefits.

If a Participant dies before he has received his first

monthly retirement benefit, the amount credited and to be credited to his tentative individual account may be applied in accordance with such Participant's election, either

a. To purchase an annuity or annuities at rates then current for individual annuities for the beneficiary or beneficiaries designated by him; or

b. Paid to such beneficiary or beneficiaries in a lump sum; or

c. Paid to such beneficiary or beneficiaries, together with interest thereon, in such number of equal annual installments, not to exceed five (5), as the Participant shall have designated; or

d. Paid or applied in such other manner as may be permitted by the applicable master contract.

If a Participant dies with no other designation in force, the amount so credited to his account shall be payable to his estate.

Article H.

Reorganization, Dissolution and Transfer

In order to permit, to the fullest practical extent, the continuity of this Trust Agreement and of arrangements made pursuant hereto, regardless of reorganization, dissolution or other organizational change within Medical Group, and transfer of Physicians between Medical Group and Affiliated Medical Groups without adverse effect upon benefits hereunder, the following arrangements are made:

Section H-1. Transfers of Individual Physicians.

Subsection H-1.a. Transfer from Medical Group.

In the event that any Participant shall terminate his association with Medical Group, and shall, within not to exceed three months thereafter (plus any time allowable to such Participant as a leave of absence without interrupting Continuous Full-time Association), become associated with an Affiliated Medical Group, he shall be deemed transferred. The transfer of a Participant from association with Medical Group shall not constitute a break in the Participant's Continuous Full-time Association under this Trust Agreement, nor terminate his status as a Participant.

Subsection H-1.b. Transfer to an Affiliated Medical Group.

If a Participant transfers to an Affiliated Medical Group, as provided in Section H-1.a., the following provisions shall apply:

i. The amount credited to the Participant's tentative account as of his date of transfer shall be determined, and the provisions of Section E-4 shall apply with respect to any amounts to be credited thereafter for services rendered during the year of transfer.

ii. The Participant's tentative account shall be deemed to be suspended and the amount determined in accordance with Subsection H-1.b.i. shall be held at interest until the Participant terminates his association with the Affiliated Medical Group (other than to transfer back to Medical Group or to another Affiliated Medical Group), retires, becomes permanently disabled, or dies. The interest rate to be used during such period of suspension shall be that guaranteed under the insurance contract, if any, or otherwise that generally credited to all other accounts held under the Trust during the period of suspension.

iii. At the time of the Participant's death, retirement, permanent disability, or termination of association (other than to transfer back to the Medical Group, or to another Affiliated Medical Group), he shall be treated as though he had, immediately prior to such time, been associated with Medical Group, and he shall be given credit for Continuous Full-time Association to such time hereunder.

Subsection H-1.c. Transfer from an Affiliated Medical Group.

In the event that any physician shall terminate his association with any Affiliated Medical Group, and shall, within not to exceed three months thereafter (plus any time allowable to such physician as a leave of absence without interrupting Continuous Full-time Association), become associated with Medical Group, he shall be deemed transferred. In the event a physician transfers from an Affiliated Medical Group, the physician shall be allowed the same amount of Continuous Full-time Association under the retirement plan established by this Trust Agreement as he had accrued immediately prior to the date of transfer with the Affiliated Medical Group or, if such Affiliated Medical Group has not

instituted a trust and retirement plan similar to this Trust, the amount of Continuous Full-time Association he would have had, if this Trust and retirement plan had been adopted by such Affiliated Medical Group.

Subsection H-1.d. Eligibility of Transferring Physician.

If a physician transfers to Medical Group in accordance with Subsection H-1.c., the following provisions shall apply:

i. If on the date of transfer the physician is credited with Continuous Full-time Association in an amount equal to two full years plus the time e[illegible]ved prior to the date of transfer during the calendar ye[illegible] during which the transfer takes place, he shall be immediately eligible to participate under this Trust and may become a Participant by executing an election to participate in accordance with Section D-2. The number of units to be allocated to such Participant for service throughout the remainder of the calendar year shall be determined in accordance with Section E-4.

ii. Any transferred physician not immediately eligible in accordance with Sub-Subsection H-1.d.i. shall become eligible on the July 1 coinciding with or next following the date on which he completes two years of Continuous Full-time Association.

Section H-2. Medical Group Reorganization, Dissolution or Other Organizational Change.

Subsection H-2.a. Effect of Medical Group Reorganization, etc.

No reorganization, dissolution, or other change in organizational structure of Medical Group shall cause or require any disposition of tentative accounts maintained pursuant to this Agreement provided at least 50% in number of the Participants (after excluding previously transferred and retired Participants) in Medical Group (as established by the most recent certificate of eligibility filed by Medical Group pursuant to Section D-3) shall, within one year after such reorganization, dissolution or other change in organizational structure, be or become associated with the Medical Group in reorganized form or with any Affiliated Medical Group.

Subsection H-2.b. Forfeitures Occasioned under Subsection H-2.a.

If, as a result of any reorganization, dissolution or other change in organizational structure within the scope of subsection H-2.a., any Participant terminates his association with Medical Group and does not transfer to an Affiliated Medical Group, and if, as of the date of such termination, such Participant has not qualified for a retirement benefit, his tentative rights under this Trust Agreement shall be forfeited; provided however that this subsection shall not apply if as a result of such reorganization, dissolution or other change, this Trust Agreement is terminated pursuant to Section H-3.

Section H-3. Termination of Trust Agreement.

Subsection H-3.a. Transfer of Trust Assets.

If, in connection with the reorganization or dissolution of Medical Group, or otherwise, Health Plan and Medical Group shall jointly determine that some other retirement or deferred compensation plan or plans will better serve to provide retirement benefits for the Participants, or more advantageously effect the purposes of this Trust, the Trustee shall, upon the joint written instructions of the Health Plan and Medical Group, transfer all or any portion of the assets of the Trust to another trustee, insurance company or other organization, corporation or person to apply toward funding such other retirement or deferred compensation plan or plans.

Subsection H-3.b. Dissolution, etc., not Provided for Above.

In the event of any reorganization, dissolution or other organizational change not falling within the scope of Section H-2 and in which no complete disposition of trust assets is effected pursuant to Subsection H-3.a., then, all remaining assets held under this Trust Agreement shall be liquidated as promptly as practical; the funds resulting from such liquidation shall be allocated to tentative individual accounts not otherwise disposed of, and the net balances thereof, after all expenses, if any, incident to such liquidation have been paid, shall be distributed by lump-sum payment to the Participants entitled thereto or their respective nominees.

Article J.

Supervisory Committees

To supervise the administration of this Trust Agreement and assist and guide the Trustee in the performance of its functions hereunder, committees with composition and authority as hereafter set forth shall be established.

Section J-1. Retirement Committee.

There shall be established a Retirement Committee, consisting of the following members:

a. Two members to be designated by Health Plan;
b. Four members to be designated by Medical Group. At least three of the members designated by Medical Group shall be medical doctors;
c. One member, not directly associated with Medical Group, to be selected by majority vote of the remaining members of the committee. It is contemplated, but not required, that this member shall be technically qualified as an actuary, insurance consultant, attorney familiar with retirement and deferred compensation matters, or through other similar qualification, to advise the remaining members of the Retirement Committee in a technical capacity.

In addition to the functions specifically delegated to the Retirement Committee under this Trust Agreement, the Retirement Committee shall advise the Trustee with respect to any questions which may arise in the administration of this Trust, and the Trustee shall be entitled to rely on and shall have no liability for carrying out in good faith advice so given by the Retirement Committee.

Each member of the Retirement Committee shall serve until he shall resign or be replaced. Any member of the committee may be replaced at any time by the organization, group or groups entitled under the foregoing provisions to appoint such member.

Section J-2. Medical Subcommittee of Retirement Committee.

There shall be established a Medical Subcommittee of

the Retirement Committee, consisting of three medical doctors who must be members of the Retirement Committee; the members of this subcommittee shall be selected by and shall serve at the pleasure of the Retirement Committee. The Medical Subcommittee of the Retirement Committee shall perform the functions designated in Section F-4, such other functions as may be delegated to such subcommittee under this Trust Agreement and such other functions as the Retirement Committee shall delegate to the Medical Subcommittee.

Section J-3. Committee Procedure.

No particular formalities shall be required for the transaction of business by the Retirement Committee or the Medical Subcommittee, and said Committees may establish their own rules or practices for the conduct of business; provided, however, that the following minimum standards shall be observed:

a. *Notice.* All committee members shall be given notice of, and a reasonable opportunity to attend, all committee meetings, which notice may be evidenced by waiver or written acknowledgment of notice signed before, at or after the meeting.

b. *Quorum.* A majority of the members of the committee shall be required to constitute a quorum.

c. *Vote required.* The vote or other action of a majority of the members of the committee present at any meeting at which a quorum is present shall constitute the action of the committee.

d. *Minutes.* Simple minutes reflecting major transactions of the committee taken at committee meetings shall be maintained.

e. *Action without a Meeting.* To whatever extent the committee may authorize at a meeting of the committee, a majority of the members of the committee may execute documents and otherwise transact business on behalf of the committee without a committee meeting. A record of all actions taken and a copy of all documents executed in such fashion shall be maintained with the records of the committee.

f. *Unanimous Action by Written Instrument.* Notwithstanding the foregoing provisions, the Retirement Committee may, without further authorization, take any action

or make any decision, which could otherwise be taken or made at a meeting of the committee, by letter, memorandum or resolution signed or concurred in by all members of the Retirement Committee; and any document executed by all members of the Retirement Committee shall constitute an act of the committee.

The foregoing standards shall apply to the Medical Subcommittee as well as to the Retirement Committee, except that the Medical Subcommittee need not hold meetings separate from or maintain records separate from those of the Retirement Committee; however, the transactions of the Medical Subcommittee shall be identified as such.

Article K.

Appointment, Powers and Compensation of Trustee

Section K-1. Appointment of Trustee and Successor Trustees.

Bank of America National Trust and Savings Association is hereby appointed Trustee under this Trust Agreement, effective upon acceptance of this Trust. In the event that said Bank shall decline to accept this Trust, another initial trustee may be designated by Health Plan and Medical Group acting jointly. Any trustee under this Trust Agreement may resign on ninety (90) days' written notice. Any trustee under this Trust Agreement may be discharged by the Retirement Committee on ninety (90) days' written notice. In the event of resignation or discharge of any trustee under this Trust Agreement, a successor trustee may be selected by the Retirement Committee, and promptly upon demand by such successor trustee, the resigning or discharged trustee shall turn over all Trust assets and records to the successor trustee.

Section K-2. Powers of Trustee.

Subject to the express limitations and provisions contained elsewhere in this Trust Agreement, and while acting in furtherance of the general purposes of this Trust Agreement, the Trustee shall have full management powers with respect to all assets of this Trust, including, but not by way of limitation, full power in the discretion of the Trustee to:

a. Invest and reinvest Trust assets and change Trust

investments without regard to any particular list or lists of investments authorized or recommended for trustees;

b. Enter into and carry out contracts of any kind or description;

c. Execute documents of any kind or description, including, but not as a limitation, documents of transfer, assignment, release, compromise, settlement, or reports, returns, applications, statements, assurances or other documents of any form;

d. Settle, compromise, prosecute or defend claims by or against the Trust through informal, administrative or judicial channels.

e. Deal with any governmental agency and take such actions and execute such documents as may be necessary or convenient in connection therewith;

f. Take any and all other actions which may be necessary or convenient in carrying out the purposes of this Trust Agreement or exercising any of the foregoing more specific powers.

The trustee shall not be subject to the control of the Retirement Committee except as expressly provided elsewhere in this Trust Agreement, but the Trustee may at any time, in its discretion, request advice or assistance from the Retirement Committee in carrying out the duties of the Trustee under this Trust Agreement, and the Trustee shall have no liability to any party to this Trust Agreement, to any Participant, or to any person who is a beneficiary, directly or indirectly, of this Trust Agreement on account of any action taken by it in an attempt in good faith to carry out any advice or instruction of the Retirement Committee.

Section K-3. Compensation and Reimbursement of Trustee.

From contributions received pursuant to Section B-2, Trustee shall be entitled to retain an amount equal to all costs or expenses paid or incurred by it which are directly attributable to the administration of this Trust, together with a reasonable trustee's fee consistent with trustees' practice in the administration of trusts involving comparable duties, which trustee's fee shall, however, be subject to the approval of the Retirement Committee. As illustrative of, but not as a limitation upon, the costs and expenses allowable to the Trustee hereunder, the following items are enumerated:

a. Any expenses which the Trustee or the Retirement Committee necessarily incur in carrying out their duties and functions hereunder, including the fees and other expenses of any panel appointed for the determination of a physician's disability, or of any consultants, investigators, attorneys or other agents engaged by the Trustee with the approval of the Retirement Committee, or by the Retirement Committee, in carrying out any functions necessary in the administration of this Trust Agreement;

b. Such amounts as shall be necessary to pay any taxes that may be assessed against the Trust;

c. Such amounts as may be necessary to pay any other claim that may be validly established against the Trust, except for claims asserted by Participants or former Participants, by beneficiaries of such Participants, or by other persons whose claims are derived directly or indirectly from a Participant or former Participant;

d. The costs and other expenses, including fees of attorneys, actuaries, accountants or other consultants engaged with the approval of the Retirement Committee incurred in the defense of any claim asserted against the Trust, the Trustee or the Retirement Committee, except for claims asserted by Participants or former Participants, by beneficiaries of such Participants, or by other persons whose claims are derived directly or indirectly from a Participant or former Participant.

Section K-4. Duties of Trustee.

In addition to such duties as may be expressed elsewhere in this Trust Agreement or incidental to the administration hereof, the Trustee shall furnish such reports and statements as may be reasonably required by the Retirement Committee in connection with the administration of this Trust.

Section K-5. Limitations on Trustee's Liability.

The Trustee shall not be liable for any action taken or omitted in good faith and reasonably believed by the Trustee to be authorized or within the discretion or rights or powers conferred on the Trustee by this Trust Agreement, unless the Trustee is grossly negligent in such conduct.

Section K-6. Rules and Regulations.

The Trustee shall have power to establish such procedural rules in addition to those expressly provided for hereunder as the Trustee may deem necessary for the proper administration of this trust.

Article L.

Miscellaneous Provisions.

Section L-1. Claims of Participants.

In the event that any Participant, former Participant, beneficiary of a Participant, or other person asserting any right hereunder derived directly or indirectly from a Participant, shall assert a claim under this Trust Agreement, which claim is denied or contested in good faith by any party to this Agreement, by the Trustee or by the Retirement Committee, then the following rules shall govern the utilization of Trust assets in the defense of settlement of such claim; all costs, including attorneys' fees and fees of actuaries, accountants or other consultants, investigators or other agents reasonably engaged in the defense of such claim shall be charged against the tentative individual account, if any, of the Participant or former Participant asserting such claim or through whom such claim is allegedly derived; if pursuant to any such claim a judgment or decree is awarded against any party to this Agreement, against the Retirement Committee, or against the Trustee, the balance, if any, remaining in the tentative individual account of the Participant or former Participant by whom such claim is asserted or through whom such claim is derived, shall be applied in satisfaction of such judgment or decree, but no other assets of this Trust shall be so applied.

Section L-2. Nonassignability of Interests.

No interest or claim of interest of any kind under the provisions of this Trust Agreement shall be assignable, nor shall any such interest or claim be subject to garnishment, attachment, execution or levy of any kind, and no attempt to transfer, assign, pledge or otherwise encumber or dispose of such interest by act of the person involved or by operation of law shall be recognized by the Trustee (except as expressly permitted by the settlement provisions of Articles F and G, except insofar as recognition of such action may be required by law.

Section L-3. Limitations on Liability.

The parties to this Trust Agreement, all Participants hereunder, and all persons who may have any rights hereunder derived from any Participant, accept this Trust Agreement, all provisions hereof, including all arrangements for the administration of this Trust, and all provisions of agreements or other documents executed pursuant hereto, without qualification or recourse, except as expressly provided herein, and neither the Retirement Committee nor the Medical Subcommittee, nor any member of any such Committee, nor any party to this Trust Agreement, shall have any liability on account of any action taken or omitted in good faith pursuant hereto.

Section L-4. Amendment.

This Trust Agreement may be amended at any time by instrument in writing executed by Health Plan and by Medical Group, provided, however, that no amendment which substantially affects the rights or responsibilities of the Trustee hereunder shall be effective unless and until the Trustee assents in writing to such amendment.

Section L-5. Interpretation of Trust Agreement.

This Trust Agreement shall be interpreted and administered in accordance with the laws of the State of California.

Executed as of the day and year first mentioned above.

The foregoing Trust Agreement and the Trust thereby established is accepter this 30 day of December 1959.

BANK OF AMERICA
N. T. & S. A.,
As Trustee

By Wilfred J. Heath
Trust Officer

By Geo. T. Reed
Assistant Trust Officer

KAISER FOUNDATION HEALTH PLAN, INC.
A California Nonprofit Corporation

By [Illegible]
Executive Vice President

THE PERMANENTE MEDICAL GROUP
A Limited Partnership of Physicians

By C. C. Cutting, M.D.
By A. J. Sender, M.D.

THE DE KRUIF, ECKHARDT, MOTT, RUBIN, STRICKER MEDICAL GROUP
A Partnership of Physicians

By John M. Mott, M.D.
By [Illegible], M.D.

TRUST AGREEMENT

Retirement Plan for The Permanente Medical Group

ALLOCATION FORMULA

In accordance with the provisions of Section E-2, the unit allocation formula to be used for the purpose of assigning units to Participants for each Fiscal Year's association shall be expressed as $(A+(A\times B\times C)\times E$; assuming the letters used in said formula have the following meanings:

"A" means a Participant's Salary Unit—one unit for each $10 of his basic monthly compensation rate.

"B" means a Participant's Past Service Credit—the number of years, if any, in excess of 2, of his Continuous Full-time Association as of June 30, 1959, said Continuous Full-time Association being conclusively shown in Schedule 1, attached, except for transferred Participants.

"C" means a Participant's Past Service Unit Factor—if the Participant has been credited with Past Service, as determined in accordance with factor B above, the factor shown in Schedule 2, attached, opposite his age on June 30, 1959, except that:

(1) if such Participant has been transferred from an Affiliated Medical Group which has a similar retirement income plan, the *age* to be used to determine factor C shall be that used by such Affiliated Medical Group, and

(2) if such Participant has been transferred from an Affiliated Medical Group which has not established a similar retirement income plan, the age to be used to determine factor C shall be the Participant's age on the date he first becomes eligible for coverage hereunder.

"E" means a Participant's Entry Age Factor—the factor shown in Schedule 3, attached, opposite the Participant's age on the date he became a Participant, except that:

(1) if such Participant has been transferred from an Affiliated Medical Group which has a similar retirement income plan, the age to be used to determine factor E shall be that used by such Affiliated Medical Group, and

(2) if such Participant has been transferred from an

Affiliated Medical Group which has not established a similar retirement income plan, the age to be used to determine factor E shall be the Participant's age on the date he first becomes eligible for coverage hereunder.

ALLOCATION FORMULA

Schedule of Continuous Full-time Association

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Aberle, Seymour	4 years
Adams, Julius T.	8 "
Adams, Pearl I.	8 "
Aker, Cecil G.	11 "
Anderson, John R.	4 "
Anderson, Neil E.	4 "
Andrews, Elizabeth T.	7 "
Ash, Donald W.	15 "
Aull, Keith	7 "
Bado, Luis D.	5 "
Ball, Harold C.	2 "
Baltz, Davis A.	4 "
Baritell, August L.	17 "
Bassis, Milton L.	3 "
Basye, James A.	11 "
Bell, Dorothy	11 "
Bien, Charles W.	7 "
Birch, Ronald S.	3 "
Black, H. Donald	3 "
Boal, Robert W.	2 "
Bolomey, Alfred A.	10 "
Briske, John P.	3 "
Broderick, Richard B.	5 "
Brody, Burton	6 "
Budai, Benedict S.	5 "
Bulgarelli, Rino	5 "
Burke, Robert H.	3 "
Burnett, Richard C.	2 "
Burnip, Sidney R.	5 "
Burns, Margaret	3 "
Calderwood, George C.	5 "
Cantrell, Mary E.	2 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Carmel, Jr., Willard J.	8 years
Cary, William S.	6 "
Chisholm, Eugene R.	7 "
Clark, Gilbert	3 "
Clinkston, Philip H.	4 "
Cogswell, Robert C.	9 "
Cohen, Solomon	4 "
Collen, Morris F.	17 "
Collier, Ella Mary	5 "
Comroe, Leon B.	6 "
Comroe, Jules B.	5 "
Constantz, Robert B.	5 "
Cook, Wallace H.	7 "
Copeland, Joseph	10 "
Cutting, Cecil C.	17 "
Dannenberg, Thur[illegible]n B.	14 "
DeFranco, Samuel L.	3 "
DeKruif, David	10 "
Dennis, Robert	8 "
Dicken, Dorothy M.	6 "
Diller, Howard A.	4 "
Dohner, Richard E.	3 "
Donchin, Jerome H.	5 "
dos Remedios, Leonard V.	7 "
Doss, John F.	3 "
Drori, Jack B.	2 "
Dunn, Fa-Chi	4 "
Eads, William S.	4 "
Eckhardt, George C.	6 "
Eldred, Roy E.	4 "
Feingold, Benjamin F.	8 "
Fernandes, David A.	9 "
Files, Ernest H.	5 "
Fisher, Carl W.	10 "
Fishler, Maurice C.	4 "
Fishman, Louis Z.	5 "
Fleming, Marian	5 "
Flett, Jr., James	7 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Flint, Jr., Thomas R.	13 years
Follette, William T.	3 "
Frank, Jr., Leo James	4 "
Freedman, William B.	5 "
Friedman, Melvin F.	13 "
Gans, Edward W.	11 "
Garcia, Carlos V.	7 "
Gavce, Jerry W.	5 "
Geier, Frederick M.	11 "
Gilkey, Jack V.	8 "
Goodman, Clifford S.	7 "
Gordon, Milton E.	6 "
Gottlieb, Frederick I.	4 "
Grant, H. Donald	16 "
Grinbergs, Anna E.	5 "
Hahne, Leonard J.	4 "
Hall, Thomas N.	5 "
Haney, Catherine A.	5 "
Hannah, Richard McCall	4 "
Harmon, Paul H.	2 "
Harris, Leon E.	5 "
Haugen, Norman L.	16 "
Hayashida, Michihiko	4 "
Hedberg, William C.	5 "
Henricks, Ann	2 "
Herbert, Charles C.	5 "
Herschel, Paul E.	3 "
Hollister, James K.	6 "
Holmboe, Harris S.	12 "
Horn, Maurice	4 "
Hotchkiss, John E.	4 "
Hunter, Jep S.	6 "
Hunter, William S.	8 "
Hurlbutt, Frank R.	5 "
Jannetti, William A.	4 "
Jansen, Maria Elizabeth	5 "
Jantzen, John C.	12 "
Jenkins, Leonie L.	4 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Jensen, Roy D.	7 years
Kahn, Bernard I.	5 "
Kaufman, Kimball C.	4 "
Kaye, Edward F.	3 "
Kelly, Frank J.	3 "
King, Alexander L.	12 "
King, Robert W.	14 "
Kirby, Harry W. B.	11 "
Knigge, William T.	11 "
Koel, Bertram S.	4 "
Koulischer, Nina	2 "
Kremser, Elizabeth L.	4 "
Krombout, George A.	7 "
Krusich, Georgia N.	11 "
Kubota, Chrysanthia K.	3 "
Kuldvere, Ebba	4 "
Kwan, Sung T.	7 "
Lake, Thomas L.	5 "
Lawson, William R.	8 "
Leeper, Roy W.	6 "
Lei, Beatrice	15 "
Lelich, Bronko P.	4 "
Lenel, Rosemarie	9 "
Leppmann, Marianne H.	4 "
Lethin, Anton N.	3 "
Levatin, Paul	10 "
Lichtenstein, Robert M.	3 "
Linder, Anatol J.	6 "
Linville, John L.	6 "
Lobel, Charles I.	5 "
Lomhoff, Irving I.	11 "
Loutzenheiser, Joyce	5 "
Loveseth, Leonard J.	4 "
Lovitt, John L.	7 "
Lynn, Carroll L.	2 "
MacDonald, Donald	3 "
Mackby, M. Judson	3 "
Makepeace, Alexander W.	8 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Marchand, Richard J.	4 years
Mayo, J. Palmer	4 "
McCune, Donovan J.	7 "
McGinley, James	6 "
McNeil, John H.	4 "
Mead, Sedgwick	5 "
Meffert, Henry	2 "
Mendelsohn, Eugene Sheldon	2 "
Mendelsohn, Mary G.	2 "
Michels, Merrill W.	13 "
Milefsky, Leonard C.	8 "
Morgenstern, Nathan L.	5 "
Mortarotti, Talbot	4 "
Mott, John M.	9 "
Mukerji, Sasanka	3 "
Muller, Henry J.	4 "
Myatt, Albert V.	3 "
Narverud, Raymond A.	4 "
Neighbor, J. Wallace	17 "
Nelson, H. Bristol	6 "
Newey, James A.	5 "
Nieda, Isamu	5 "
Nussbaum, Herman	5 "
Ogilvie, Robert J.	2 "
Olpin, Harold W.	4 "
Olwin, Thomas Kent	2 "
Orski, Barbara M.	2 "
Owen, Lloyd H.	5 "
Parsens, Darold J.	4 "
Pease, John A.	2 "
Pellegrin, Frederick A.	10 "
Perloff, Phillip	6 "
Pietropaoli, Remo	4 "
Pooley, Mary L.	4 "
Poort, John N.	7 "
Raimondi, Phillip J.	15 "
Raphael, Ellen Gunther	4 "
Raphael, James C.	2 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Reichenberg, Stanley	3 years
Renoir, Maurice P.	6 "
Resnick, Bernard	2 "
Revis, Nicholas T.	6 "
Rhodes, Bernard L.	6 "
Ritter, Jr., Daniel	6 "
Robson, Philip G.	9 "
Rosenthal, Joseph H.	2 "
Roth, Arthur	7 "
Roth, Leonard	7 "
Rousseau, Paul	11 "
Rubin, Leonard	6 "
Saeed, Yunis M.	3 "
Santomieri, Louis S.	5 "
Sategna, James	10 "
Schaaf, Frederick C.	5 "
Schiller, Francis	5 "
Schoen, Edgar J.	5 "
Schwartz, Herman A.	5 "
Seidman, Alexander	6 "
Sender, A. Joseph	8 "
Shannon, Edward P.	4 "
Shearn, Martin	4 "
Shenk, Morris J.	8 "
Singer, Bella	5 "
Smillie, John G.	10 "
Smith, Jr., P. Dunlap	5 "
Snowden, Vernon L.	11 "
Soghikian, Krikor	4 "
Sorokowski, Nadia	5 "
Southerland, Robert W.	4 "
Speer, Evans	5 "
Stange, Paul E.	6 "
Stanton, W. K.	3 "
Stathakos, Peter N.	5 "
Steadman, Monte G.	8 "
Stein, George H.	6 "
Steinhardt, David	7 "

Name of Participant	Continuous Full-time Association as of June 30, 1959 to nearest year
Sweeny, Edward W.	4 years
Sweet, Rex E.	3 "
Tai, Shou Nan	2 "
Takahashi, Kazuyuki	6 "
Taylor, Billy B.	4 "
Thal, F. Joseph	7 "
Thompson, Roderick I.	10 "
Townsend, James D.	3 "
Traurig, Estelle	3 "
Treubel, Fredrick W.	4 "
Troutner, Leonard P.	5 "
Utter, Henry M.	6 "
Uyeda, Clifford I.	5 "
Vrcon, Stanley	2 "
Wang, Hsien Fen	3 "
Weber, Paul M.	4 "
Welts, Robert V.	5 "
Williams, Winfield T.	2 "
Willner, Charles E.	2 "
Winters, Harold S.	8 "
Wood, Gordon K.	3 "
Woodruff, William Egleston	2 "
Young, John R.	4 "
Zach, Frank S.	3 "

Allocation Formula

Past Service Unit Factors

Age, nearest birthday, as of June 30, 1959	Past Service Unit Factor
64	1.03
63	.52
62	.35
61	.27
60	.22
59	.18
58	.16
57	.14
56	.13
55	.12
54	.11
53	.10
52	.09
51	.09
50	.08
49	.08
48	.07
47	.07
46	.07
45	.07
44	.06
43	.06
42	.06
41	.06
40	.06
39	.05
38	.05
37	.05
36	.05
35	.05
34	.05

Age, nearest birthday, as of June 30, 1959	Past Service Unit Factor
33	.05
32	.05
31	.05
30 or younger	.04

ALLOCATION FORMULA
Entry Age Factors

Age, nearest birthday at entry into Program	Entry Age Factor
27	1.000
28	1.036
29	1.073
30	1.113
31	1.154
32	1.199
33	1.245
34	1.295
35	1.348
36	1.404
37	1.465
38	1.513
39	1.566
40	1.621
41	1.680
42	1.743
43	1.812
44	1.885
45	1.966
46	2.052
47 and over	2.148

APPENDIX A
Schedule 3
Effective July 1, 1960

ALLOCATION FORMULA

Entry Age Factors

Age, nearest birthday at entry into Program	Entry Age Factor
27	1.000
28	1.028
29	1.057
30	1.087
31	1.117
32	1.148
33	1.179
34	1.211
35	1.244
36	1.278
37	1.312
38	1.347
39	1.383
40	1.419
41	1.456
42	1.494
43	1.533
44	1.573
45	1.613
46	1.654
47	1.696
48	1.738
49	1.781
50	1.826
51	1.871
52	1.917
53	1.963
54	2.010
55	2.059
56	2.109
57	2.148
58	2.148
59	2.148
60	2.148

Age, nearest birthday at entry into Program	Entry Age Factor
61	2.148
62	2.148
63	2.148
64	2.148

First Amendment to Trust Agreement

(Retirement Program for Eligible Participants Associated with The Permanente Medical Group)

Effective as of July 1, 1960, the allocation formula set forth in Appendix A attached to the Trust Agreement effective July 1, 1959 among Kaiser Foundation Health Plan, Inc., The Permanente Medical Group and Bank of America National Trust and Savings Association that establishes a retirement income program for Participants qualifying under the provisions of said Trust Agreement is amended by deleting Schedule 3 therefrom and substituting in lieu thereof the revised Schedule 3 attached to this Amendment, provided, however, that the original Schedule 3 deleted by this Amendment shall govern allocations covering the period prior to July 1, 1960.

Executed at Oakland, California as of the day and year first mentioned above.

The Permanente Medical Group
A Limited Partnership of Physicians

By C. C. Cutting, M.D.

Kaiser Foundation Health Plan, Inc.
A California Nonprofit Corporation

By (Illegible)
Vice President

Approved and Accepted
this 30 day of June, 1961
Bank of America National Trust and
Savings Association, as Trustee

By (Illegible)
Trust Officer

By A. D. Vierra
Asst. Trust Officer

Revised Allocation Formula
The Permanente Medical Group

Age at Entry Into Program	Past Service	Entry Age
27	.04	1.000
28	.04	1.028
29	.04	1.057
30	.04	1.087
31	.05	1.117
32	.05	1.148
33	.05	1.179
34	.05	1.211
35	.05	1.244
36	.05	1.278
37	.05	1.312
38	.05	1.347
39	.05	1.383
40	.06	1.419
41	.06	1.456
42	.06	1.494
43	.06	1.533
44	.07	1.573
45	.07	1.613
46	.07	1.654
47	.07	1.696
48	.07	1.738
49	.08	1.781
50	.08	1.826
51	.09	1.871
52	.09	1.917
53	.10	1.963
54	.11	2.010
55	.12	2.059
56	.13	2.109
57	.14	2.148
58	.16	2.148
59	.18	2.148
60	.22	2.148
61	.27	2.148
62	.35	2.148
63	.52	2.148
64	1.03	2.148

Second Amendment to Trust Agreement

(Retirement Program for Eligible Participants Associated with The Permanente Medical Group)

Effective as of July 1, 1960, the allocation formula set forth in Appendix A attached to the Trust Agreement executed effective July 1, 1959 by Kaiser Foundation Health Plan, Inc., The Permanente Medical Group and Bank of America, National Trust and Savings Association, establishing a retirement income program for participants qualifying under the provisions of said Trust Agreement, is amended by striking therefrom the revised Schedule 3 set forth in that certain First Amendment to the Trust Agreement executed effective July 1, 1960 and by reinstating in said Appendix A of said Trust Agreement Schedule 3 as the same originally appeared in said Appendix A of said Trust Agreement when first executed.

Executed at Oakland, California as of the day and year first above mentioned.

The Permanente Medical Group
A Limited Partnership of Physicians

By C. C. Cutting, M.D.

Kaiser Foundation Health Plan, Inc.
A California Nonprofit Corporation

By Clifford H. Keene

Approved and Accepted.

Bank of America, National Trust
and Savings Association

By (Illegible)
Vice President

By Geo. T. Reid
Assistant Trust Officer

Revised Allocation Formula
The Permanente Medical Group

Age at Entry Into Program	Past Service	Entry Age
27	.04	1.000
28	.04	1.028
29	.04	1.057
30	.04	1.087
31	.05	1.117
32	.05	1.148
33	.05	1.179
34	.05	1.211
35	.05	1.244
36	.05	1.278
37	.05	1.312
38	.05	1.347
39	.05	1.383
40	.06	1.419
41	.06	1.456
42	.06	1.494
43	.06	1.533
44	.07	1.573
45	.07	1.613
46	.07	1.654
47	.07	1.696
48	.07	1.738
49	.08	1.781
50	.08	1.826
51	.09	1.871
52	.09	1.917
53	.10	1.963
54	.11	2.010
55	.12	2.059
56	.13	2.109
57	.14	2.148
58	.16	2.148
59	.18	2.148
60	.22	2.148
61	.27	2.148
62	.35	2.148
63	.52	2.148
64	1.03	2.148

Second Amendment to Trust Agreement

(Retirement Program for Eligible Participants Associated with The Permanente Medical Group)

Effective as of July 1, 1960, the allocation formula set forth in Appendix A attached to the Trust Agreement executed effective July 1, 1959 by Kaiser Foundation Health Plan, Inc., The Permanente Medical Group and Bank of America, National Trust and Savings Association, establishing a retirement income program for participants qualifying under the provisions of said Trust Agreement, is amended by striking therefrom the revised Schedule 3 set forth in that certain First Amendment to the Trust Agreement executed effective July 1, 1960 and by reinstating in said Appendix A of said Trust Agreement Schedule 3 as the same originally appeared in said Appendix A of said Trust Agreement when first executed.

Executed at Oakland, California as of the day and year first above mentioned.

The Permanente Medical Group
A Limited Partnership of Physicians

By C. C. Cutting, M.D.

Kaiser Foundation Health Plan, Inc.
A California Nonprofit Corporation

By Clifford H. Keene

Approved and Accepted.

Bank of America, National Trust
and Savings Association

By (Illegible)
Vice President

By Geo. T. Reid
Assistant Trust Officer

SCHEDULE SHOWING HOW FUNDS IN RETIREMENT TRUST ALLOCATED AND DETERMINED FOR EACH YEAR IN ISSUE

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
T/S FISCAL YEAR ENDED	HEALTH PLAN PAYMENTS TO TRUST (I/C) [col. (b), sched. para. 19]	NET INCOME EARNED ON TRUST CORPUS (I/I) [col. (c), sched. para. 19]	TOTAL UNITS UNDER PLAN ALLOCATED ALL PARTICIPANTS RE I/C	UNITS UNDER PLAN ALLOC. P/P RE I/C	AMOUNT OF I/C ALLOC. P/P [(e)÷(d) x(b)]	UNIT VALUE OF I/C ALLOC. P/P [(f)÷(e)]	TOTAL UNITS UNDER PLAN ALLOCATED ALL PARTICIPANTS RE I/I	UNITS UNDER PLAN ALLOC. P/P RE I/I	AMOUNT OF I/I ALLOC. P/P [(i)÷(h) x(c)]	UNIT VALUE OF I/I ALLOC. P/P [(j)÷(i)]	AMOUNT OF I/C PLUS I/I ALLOC. N/P UNDER PLAN [(b)+(c) -(f)-(j)]	TOTAL P/S SHARES DETERMINED RE DIVISION OF PROFITS RATIO	VALUE P P/S SHA OF I/C PLUS I/I ALLOC. [(l)÷(
12/6-30-60	$516,298.68	$ 2,159.74	93,966.09	86,006.93	$473,385.62	$5.50404	(see n. 1)	(see n. 1)	(see n. 1)	(see n. 1)	$45,072.80	197.5	$228.213
				2/83,591.32	$461,215.61	$5.51750					$40,097.79	197.5	$203.02
6-30-61	$573,924.60	$ 3,355.79	98,104.47	91,349.49	$533,297.24	$5.83799	90,735.98	87,809.77	$-3,247.56	$0.03698	$40,735.59	222.5	$183.061
				2/91,249.49	$533,297.24	$5.84438	90,735.98	87,663.36	$ 3,242.16	$0.03698	$40,740.99	222.5	$183.105
-30-62	$606,866.28	$30,290.56	99,065.65	91,959.27	$563,333.31	$6.12590	96,985.56	94,275.70	$29,443.92	$0.31232	$44,379.61	232.81	$190.624
6-30-63	$640,348.68	$26,097.00	99,685.55	93,361.38	$599,724.20	$6.42369	96,874.67	93,717.64	$25,246.53	$0.26939	$41,474.95	249.64	$166.141

KEY: P/S — PARTNERSHIP
I/C — INCREASE IN TRUST CORPUS
I/I — INCREASE IN TRUST INCOME
P/P — PARTNER-PARTICIPANTS IN RETIREMENT PLAN
N/P — NONPARTNER-PARTICIPANTS IN RETIREMENT PLAN
T/P — TAXPAYER

NOTES:

1/ For the initial year of 1960 only, the plan combined corpus and income for purposes of allocation to participants. Columns (d) through (g), and related columns (r) and (s) on the following page, therefore include both corpus and income for 1960 only.

2/ The second-line figures for 1960 and 1961 represent allocation recomputations made by the Internal Revenue Service after the tax deficiencies for all plaintiffs except Sorokowski had been administratively determined and assessed. In the schedule on the following page, showing the increases in plaintiff-taxpayers' income as determined by the Internal Revenue Service for the years in question, only the Sorokowski figures for 1960 and 1961 are based on the second-line recomputations.

SCHEDULE CONTINUED — SHOWING ALLOCATIONS AND DETERMINATIONS FOR EACH PLAINTIFF-TAXPAYER

(o) T/P - P/P (PLAINTIFFS)	(p) T/P TAX YEAR	(q) T/P SHARE OF P/S INCOME PER P/S RETURN	(r) UNITS UNDER PLAN ALLOC. T/P RE I/C [col. (e)]	(s) VALUE OF UNITS ALLOC. T/P RE I/C [(r)x(g)]	(t) UNITS UNDER PLAN ALLOC. T/P RE I/I [col. (i)]	(u) VALUE OF UNITS ALLOC. T/P RE I/I [(t)x(k)]	(v) P/S SHARE OF T/P PER PROFITS RATIO [col. (m)]	(w) VALUE OF T/P SHARE OF I/C PLUS I/I ALLOC. M/P [(v)x(n)]	(x) TOTAL INCREASE DETERMINED IN T/P INCOME RE TRUST [(s)+(u)+(w)]
DR. JAMES BAYSE	1960	$31,837.69	517.44	$2,848.01	-0-	-0-	1	$228.21	$3,076.22
	1961	$33,952.00	530.38	$3,096.35	517.44	$19.14	1	$183.08	$3,298.57
DR. CAROL LYNN COOK	1961	$18,379.00	116.55	$ 680.42	132.71	$ 4.91	0.5	$ 91.54	$ 776.87
DR. MAURICE FISHIER	1960	$27,004.93	347.22	$1,911.11	-0-	-0-	1	$228.21	$2,139.32
	1961	$28,572.00	391.80	$2,287.32	347.22	$12.86	1	$183.08	$2,483.26
DR. DONALD GRANT	1960	$33,982.69	699.15	$3,848.16	-0-	-0-	1	$228.21	$4,076.36
	1961	$36,982.00	737.64	$4,306.33	699.15	$25.86	1	$183.08	$4,515.27
DR. WILLIAM HUNTER	1960	$26,676.79	471.80	$2,596.81	-0-	-0-	1	$228.21	$2,825.02
	1961	$29,301.61	463.43	$2,705.50	471.80	$17.45	1	$183.08	$2,906.03
DR. JESSAMINE HUNTER	1960	$20,647.47	283.42	$1,559.96	-0-	-0-	1	$228.21	$1,788.17
	1961	$23,924.09	243.21	$1,419.86	283.42	$10.48	1	$183.08	$1,613.42
DR. NADIA SOKOLOWSKI	1960	$24,157.69	241.32	$1,331.48	-0-	-0-	1	$203.02	$1,534.50
	1961	$26,346.61	255.73	$1,494.58	241.32	$ 8.92	1	$183.10	$1,686.60
	1962	$26,705.68	244.92	$1,500.35	255.73	$79.86	1	$190.62	$1,770.83
	1963	$24,363.94	244.92	$1,573.28	244.92	$65.97	1	$166.14	$1,805.39

Statement of Forfeitures by Terminating Participants During Fiscal Years Ending in 1960 Through 1963

Name of Participant	Date of Employment	Date of Participation	Date of Partnership	Date of Termination	Tentative Account Balance Forfeited
*Southerland, Robert W.	9-7-54	7-1-59	—	8-15-59	$ 279.24
Chisholm, Eugene R.	4-14-52	7-1-59	7-1-55	11-1-59	805.44
Loutzenheiser, Joyce C.	3-17-54	7-1-59	7-1-58	7-1-60	1,224.88
Muller, Henry J.	6-1-55	7-1-59	7-1-58	7-1-60	2,090.91
Files, Ernest H.	5-1-54	7-1-59	7-1-57	9-30-60	2,490.80
*Meffert, Henry	10-8-56	7-1-59	—	9-30-60	1,520.06
Gordon, Milton E.	8-10-53	7-1-59	7-1-56	3-8-61	2,757.22
*Wood, Gordon K.	7-16-56	7-1-59	—	8-6-61	1,109.36
*Burns, Margaret	7-16-56	7-1-59	—	10-16-61	812.86
Ogilvie, Robert J.	7-1-57	7-1-59	7-1-59	4-1-62	3,098.08
*Roth, George J.	7-1-59	7-1-61	—	5-1-62	682.69
Kremser, Elizabeth L.	7-6-53	7-1-59	7-1-57	8-16-62	2,306.62
Dreri, Jack B.	7-1-57	7-1-59	7-1-60	8-16-62	2,803.88
Gottlieb, Frederick I.	2-14-55	7-1-59	7-1-58	8-31-62	5,611.60
*Henrichs, Ann O.	7-1-60	7-1-59	—	11-15-62	2,240.45
Stone, Bernard	8-4-58	7-1-60	7-1-61	11-30-62	3,703.98
*Fleming, Marian	10-1-53	7-1-59	—	2-1-63	4,452.05
Wang, Hsin Fen	11-28-55	7-1-59	7-1-59	2-1-63	3,189.53
Gilkey, Jack V.	1-2-49	7-1-59	7-1-54	3-1-63	7,409.27
Roth, Arthur	1-1-50	7-1-59	7-1-55	4-1-63	5,512.74
*DeKruif, David	1-3-61	7-1-59	—	4-1-63	3,110.66
*Williams, Francis R.	7-1-60	7-1-62	—	5-11-63	767.98
Vreon, Stanley	6-18-57	7-1-59	7-1-60	5-16-63	4,972.62

* Non-Partner.

May 5, 1967

Cecil F. Poole
United States Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

Attention John M. Youngquist
Assistant United States Attorney

Dear Mr. Youngquist:

Sorokowski v. United States
Civil No. 45575

We have received United States Treasury check No. 57,128,129 drawn payable to the order of George W. and Nadia Sorokowski in the amount of $3,875.31, and representing a purported refund of income taxes for the year 1963. As you are aware, we believe that such refund for 1963 was made in error, and that the Sorokowskis are entitled to recover only the sums requested in their pending suit for refund of income taxes, for the years involved in that suit, and for the reasons therein alleged. Accordingly, we have deposited said check in a trust account pending a final judgment in the above action. If you prefer, we will be happy to return the money immediately so that the United States may retain it during the pendency of the above action.

We frankly do not understand why this check was issued in the first place. It represents a refund which the Sorokowskis have never claimed, and to which they do not believe they are entitled. We were certainly not aware that it was the general policy of the United States to volunteer such unsolicited refunds of income taxes.

Cordially yours,

STARK & CHAMPLIN

By John F. Banker
JOHN F. BANKER

EXHIBIT F

Notation re Opinion of District Court

The opinion of the district court is printed in the Petition for Certiorari, and may be found therein at pages 15-29, as Appendix A. It is therefore not reprinted in this Appendix.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

Civil No. 44352
Judgment

This action was consolidated for trial with actions numbered 44353, 44354, 44355, 44356 and 45575, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issue" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs James E. Basye and Evelyn E. Basye have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
1960	Tax	$1,424.02	June 18, 1965
1960	Interest	356.70	June 18, 1965
1961	Tax	1,586.93	June 18, 1965
1961	Interest	302.30	June 18, 1965

Dated: Dec. 11, 1968

/s/ Albert C. Wollenberg
[ALBERT C. WOLLENBERG]
United States District Judge

Approved as to Form:

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44353
Judgment

This action was consolidated for trial with actions numbered 44352, 44354, 44355, 44356 and 45575, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issue" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs Jack J. Cook and Carol L. Cook have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
1961	Tax	$301.04	June 18, 1965
1961	Interest	57.35	June 18, 1965

Dated: Dec. 11, 1968

/s/ Albert C. Wollenberg
[ALBERT C. WOLLENBERG]
United States District Judge

Approved as to Form:

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

CIVIL No. 44354
Judgment

This action was consolidated for trial with actions numbered 44352, 44353, 44355, 44356 and 45575, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issue" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs Maurice C. Fishler and Phyllis H. Fishler have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
1960	Tax	$660.87	June 18, 1965
1960	Interest	165.54	June 18, 1965
1961	Tax	869.67	June 18, 1965
1961	Interest	165.66	June 18, 1965

Dated: Dec. 11, 1968

/s/ Albert C. Wollenberg
ALBERT C. WOLLENBERG
United States District Judge

Approved as to Form:

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

CIVIL No. 44355
Judgment

This action was consolidated for trial with actions numbered 44352, 44353, 44356 and 45575, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issues" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs Henry Donald Grant and Jean H. Grant have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
Separate judgment in favor of plaintiff Henry Donald Grant:			
1960	Tax	$ 919.76	June 18, 1965
1960	Interest	230.39	June 18, 1965
Separate judgment in favor of plaintiff Jean H. Grant:			
1960	Tax	919.76	June 18, 1965
1960	Interest	230.39	June 18, 1965
Joint judgment in favor of both plaintiffs:			
1961	Tax	2,236.90	June 18, 1965
1961	Interest	426.12	June 18, 1965

Dated: Dec. 11, 1968

/s/ Albert C. Wollenberg
ALBERT C. WOLLENBERG
United States District Judge

Approved as to Form:
/s/ John M. Youngquist
JOHN M. YOUNGQUIST
United States Attorney

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44356
Judgment

This action was consolidated for trial with actions numbered 44352, 44353, 44354, 44355 and 45575, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issues" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs William S. Hunter and Jessamine S. Hunter have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
1960	Tax	$4,094.24	June 18, 1965
1960	Interest	1,025.57	June 18, 1965
1961	Tax	$1,630.92	June 18, 1965
1961	Interest	310.68	June 18, 1965

Dated: Dec. 11, 1968

/s/ Albert C. Wollenberg
ALBERT C. WOLLENBERG
United States District Judge.

Approved as to Form:

/s/ John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 45575
Judgment

This action was consolidated for trial with actions numbered 44352, 44353, 44354, 44355 and 44356, and was submitted for decision pursuant to that certain "Stipulation for Presentation of Cases as Short Cause Under Rules 7 & 9, and Agreed Statements of Facts and Issue" filed March 27, 1968, and the Court having filed its Memorandum of Decision herein on November 29, 1968 wherein appear its findings of fact and conclusions of law,

IT IS ORDERED AND ADJUDGED that plaintiffs George W. Sorokowski and Nadia Sorokowski have judgment against, and recover from, defendant United States of America overpayments of income tax and interest in the sums set forth hereafter, made on the dates hereafter shown, together with interest thereon at 6% per annum to a date preceding the issuance of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue, together with plaintiffs' costs to be taxed by the Clerk of the Court in the sum of $.....

Tax Year	Amounts of Overpayment		Dates of Overpayment
1960	Tax	$692.86	April 25, 1966
1960	Interest	208.99	May 24, 1966
1961	Tax	792.70	April 25, 1966
1961	Interest	191.55	May 24, 1966
1962	Tax	873.42	April 25, 1966
1962	Interest	158.65	May 24, 1966
1963	Tax	902.69	April 25, 1966
1963	Interest	109.80	May 24, 1966

IT IS FURTHER ORDERED AND ADJUDGED that defendant, The United States of America, have judgment against, and recover from, plaintiffs George W. Sorokowski and Nadia

Sorokowski by way of set off against the foregoing judgment in favor of plaintiffs the sum of $3,875.31 with interest thereon at the rate of 6% per annum from and after March 8, 1967.

Dated: Dec. 11, 1968.

/s/ Albert C. Wollenberg
[Albert C. Wollenberg]
United States District Judge.

Approved As to Form:

/s/ John M. Youngquist
John M. Youngquist
Assistant United States Attorney.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44352
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44353
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[Caption Omitted]

Civil No. 44354
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44355
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 44356
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

[*Caption Omitted*]

Civil No. 45575
Notice of Appeal

NOTICE is hereby given that the UNITED STATES OF AMERICA, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the thirteenth (13th) day of December, 1968.

Dated: Feb. 7, 1969

CECIL F. POOLE
United States Attorney

By: John M. Youngquist
JOHN M. YOUNGQUIST
Assistant United States Attorney
Attorneys for Defendant.

NOTATION RE OPINION AND JUDGMENTS OF COURT OF APPEALS

The opinion of the court of appeals, accompanied by an order amending the opinion, is printed in the Petition for Certiorari, and may be found therein at pages 31-42, as Appendix B. The judgments of the court of appeals are printed in the Petition for Certiorari, and may be found therein at pages 43-48, as Appendix C. They are therefore not reprinted in this Appendix.

SUPREME COURT OF THE UNITED STATES

No. 71-1022, October Term, 19

UNITED STATES,

PETITIONER

v.

JAMES A. BASYE, ET AL.

ORDER ALLOWING CERTIORARI. Filed April 3, 1972

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

☆ U.S. Government Printing Office: 1972—465-540/73